Argued Jany 9, 1894

Reargued Jany 30, 31

TRANSCRIPT OF RECORD.

162-184

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 794

THE LAW ASSOCIATION
OF
PHILADELPHIA.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 29, 1894.

(15,613.)

(15,613.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 729.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 & 2 UNITED STATES OF AMERICA, *Fifth Judicial Circuit.*

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held, pursuant to law, in the court-room of said court, in the city of New Orleans, on the third Monday of November, A. D. 1893, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Harry T. Toulmin, United States district judge for the southern district of Alabama, composing said circuit court of appeals.

INTERSTATE COMMERCE COMMISSION
v.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

Be it remembered that heretofore, to wit, on the 12th day of August, A. D. 1893, a transcript of the record of said cause in the United States circuit court for the northern district of Georgia was filed in the office of the clerk of said circuit court of appeals in the words and figures following, to wit:

3 In the Circuit Court of the United States for the Northern District of Georgia.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, The Western & Atlantic Railroad Company, and The Georgia Railroad Company.

To the circuit court of the United States, sitting in equity, within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, humbly complaining showeth unto your honors, that the Cincinnati, New Orleans & Texas Pacific Railway Com-
4 pany is a corporation created, chartered and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in the said State of Ohio; that the Western & Atlantic Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State

of Georgia, having its principal office at Atlanta, in the said State of Georgia; that the Georgia Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in the said State of Georgia; and that the said defendants were at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property by their several lines of railroad, under a common control, management or arrangement for continuous carriage or shipment through several of the United States, and particularly were the said defendants then engaged in the said business from Cincinnati, in the State of Ohio, thence through the intermediate States of Kentucky and Tennessee to Social Circle, Augusta and Atlanta, in the State of Georgia, and as such common carriers were during all the time aforesaid and still are subject to the provisions of the said act, entitled "An act to regulate commerce," and said amendments thereto.

That the said defendants were heretofore, to wit, on the 1st day of October, 1889, duly impleaded in a controversy, not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of the James & Mayer Buggy Company, a manufacturing corporation chartered and existing under the laws of the State of Ohio, and having its principal office in Cincinnati in that State, for an alleged violation on the part of the said defendants of the provisions of the said act, entitled "An act to regulate commerce," as at large and more fully appears by the
5 said petition on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit A."

That thereafterwards, to wit, on the 8th day of November, 1889, the Western & Atlantic Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit B."

That thereafterwards, to wit, on the 11th day of November, 1889, the Georgia Railroad Company filed its answer to the above-named petition of the said James & Mayer Buggy Company, as at large and more fully appears in and by the said answer on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit C."

That thereafterwards, to wit, on the 29th day of November, 1889, the said Cincinnati, New Orleans & Texas Pacific Railway Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit D."

That thereafterwards the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before

the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, on the 21st day of February, 1890, when an order was duly made in said cause, as at large and more fully appears in and by said order on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit E."

That thereafterwards, on the 21st day of March, the said cause still being at issue upon the pleadings aforesaid duly came
6 on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose at the city of Washington, in the District of Columbia, pursuant to the provisions in said order of the 21st day of February, 1890, whereof all the parties had due and sufficient notice, and thereupon such proceedings were had that the said cause was continued from time to time until the 3d day of June, 1890.

And on the said 3d day of June, 1890, the said cause then being still at issue upon the pleadings aforesaid, duly came on for hearing before the said commission, duly and legally assembled for that purpose at the city of Washington, when the said complainant, The James & Mayer Buggy Company, as well as the defendants, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Western & Atlantic Railroad Company and The Georgia Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said commission that the said defendant had violated the provisions of the said act, entitled "An act to regulate commerce," in certain respects, as was stated to have been violated by them in the said petition herein referred to as a part hereof, and thereupon, on the 29th day of June, 1891, the said commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said commission were based, as at large and more fully appears in and by the report of the determination of the said commission on file in the office of the said commission, and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit F."

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said commission duly formulated
7 an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said commission with respect thereto, agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified or changed in any respect whatever, and is now on file in the office of the said commission and a copy whereof is hereunto annexed and made a part of this petition, the same being marked "Exhibit G."

That thereafterwards, to wit, on the 8th day of July, 1891, the said

commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint, as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants, and thereupon the petitioner shows that it has not been made to appear to the said commission that the Cincinnati, New Orleans & Texas Pacific Railway Company, the Western & Atlantic Railroad Company and the Georgia Railroad Company have ceased and desisted from the violations of law set forth in the said report and order of the said commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said commission, as stated in its report aforesaid, have, through their officers, servants and attorneys, wholly disregarded and set at naught the authority of the said commission in that regard, and have willfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and notice as hereinbefore set forth hitherto wholly neglected and refused and still do neglect and refuse to comply with the same, to wit, at Social Circle, in the State of Georgia,
at Augusta, in the State of Georgia, and at Atlanta, in the
8 State of Georgia, in this that the said defendants have not since the 20th day of July, 1891, desisted from charging or receiving any greater compensation in the aggregate for transportation in less than car-loads of buggies, carriages and other articles classified by them as freight of the first class for the shorter distance over the line formed by their several railroads from Cincinnati, in the State of Ohio, to Social Circle, in the State of Georgia, than they charge or receive for the transportation of said articles in less than car-loads for the longer distance over the same line from Cincinnati aforesaid to Augusta, in the State of Georgia; nor have the said defendants, The Cincinnati, New Orleans & Texas Pacific Railway Company and The Western & Atlantic Railroad Company, from and after the 20th day of July, 1891, wholly ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of buggies, carriages and said other first-class articles in less than car-loads from Cincinnati aforesaid to Atlanta, in the State of Georgia, than one dollar per hundred pounds; and the petitioner attaches hereto, by way of a specification of some of the particulars in which the said defendants have failed to comply with the said order and report of the said commission, an affidavit of C. C. McCain, auditor of the said commission, showing the rates on the articles mentioned in said order now charged by the said defendants in violation thereof, the said affidavit being marked "Exhibit H," is hereunto attached and made a part of this petition.

Wherefore the petitioner prays:

1. That a subpœna, or other suitable process may issue according to the course of equity, requiring the Cincinnati, New Orleans and
Texas Pacific Railway Company, the Western & Atlantic
9 Railroad Company and the Georgia Railroad Company, severally to appear at such time and place as this honorable

court may determine, then and there, each to make full, complete and perfect answer to the matters and things hereinabove stated and charged, as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants and attorneys, from further continuing in their violations of and disobedience to the said order of the said commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sums of money, not exceeding the sum of five hundred dollars, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

10 7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.] By EDW. A. MOSELEY,

The Secretary Thereof, Thereunto Duly Authorized.

11 EXHIBIT A.

12 Interstate Commerce Commission.

JAMES & MAYER BUGGY CO.
against
C., N. O. & T. P. R. R. Co., W. & A. R. R. Co., GEORGIA R. R. Co.

The petition of the above-named complainant respectfully shows:

1st. That the James & Mayer Buggy Co. manufacture buggies, carriages, etc., in the city of Cincinnati, State of Ohio.

2nd. That the defendants above named are common carriers, and under a common control, management or arrangement for continuous carriage or shipment, are engaged in the transportation of passengers and property, wholly by railroad, between Cincinnati,

in the State of Ohio, and Chattanooga, in the State of Tennessee, and between Chattanooga, in the State of Tennessee, and Atlanta, in the State of Georgia, and between Atlanta, in the State of Georgia, and Augusta in the State of Georgia, and as such common carriers are subject to the act to regulate commerce.

3rd. That the first-class rate of freight as published in the tariff of the C. N. O. & T. P. R. R. Co., from Cin'ti, Ohio, to Atlanta, Ga., the distance being about 477 miles (more or less), is $1.01 per hundred lbs.

4th. That the first-class rate of freight from Cin'ti, O., to Augusta, Ga., over the same lines of railroad, the distance being about 648 miles (more or less), is also $1.01 per hundred lbs.

13 & 14 5th. That the first-class rate of freight from Cin'ti, O., to social Circle, Ga., over the same lines, the distance being about 525 miles (more or less), is $1.31 per hundred lbs.

6th. That the complainant above named, shipping vehicles to Atlanta, Ga., ought not to be compelled to pay the same rate of freight as when shipping to Augusta, Ga., a point 171 miles further distant on the same lines.

7th. That the complainant above named, in shipping vehicles to Social Circle, Ga., ought not to be compelled to pay a rate of freight which is 30 cts. per hundred lbs. higher than when shipping to Augusta, Ga., a point 120 miles (more or less) further distant along the same lines.

8th. That the above-named defendants are violating section "4" of the act to regulate commerce, in charging a greater sum for a shorter distance than for a longer distance in the same direction over the same lines.

Wherefore the petitioner prays that the defendant- may be required to answer the charges herein, and that, after due hearing and investigation, an order be made commanding the defendant- to cease and desist from said violation of the act to regulate commerce, and for such other and further orders as the commission may deem necessary in the premises.

Dated at Cincinnati, Ohio, October 1st, 1889.

JAMES & MAYER BUGGY CO.,
By HOWARD K. JAMES.

Sworn to before me and in my presence subscribed this 16 day of October, 1889.

[SEAL.] JOHN R. HOLMES,
Notary Public, Hoen Co.

15 EXHIBIT B.

16 ATLANTA, GA., *Nov.* 5, 1889.

The Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: I have before me your favor of Oct. 22d, enclosing copy of petition filed against our company, embracing a statement of charges made by the James & Mayer Buggy Co.

In reply I will state that there is nothing in the interstate com-

merce law, so far as we read it, which requires that we should make from Cincinnati to Atlanta a less rate than from Cincinnati to Augusta. Therefore we do not consider that that portion of the complaint filed by the petitioners has any force.

Regarding the rate of freight from Cincinnati to Social Circle, Ga., I will state that Social Circle is a local point on the Georgia railroad, and that company has not furnished us with any basis for working business to its local points other than taking the rate as in this instance from Cincinnati to Atlanta and adding their local. This company on this business has charged no more than if the freight had stopped at Atlanta, or than it would receive going to any point within the same radius from Atlanta as that in which Social Circle is located.

Further, as the rates to Augusta are brought down by water competition, we do not consider that we have violated the interstate commerce law. The rate within itself is not unreasonable, and we cannot see that there is any discrimination against the parties at Social Circle, and this company furthermore is unable to control the local rates of any of its connections.

Yours very truly, JOSEPH M. BROWN,
Traffic Manager.

Personally appeared before me Joseph M. Brown, traffic manager, who being duly sworn deposes and says that the above statements are true to the best of his knowledge and belief.

[SEAL.] C. T. WATSON, *N. P.*

17 EXHIBIT C.

18 JAMES & MAYER BUGGY CO.
against
C., N. O. & T. P. R. R. Co., W. & A. R. R. Co., and GEORGIA R. R. Co.

Answer of the Georgia Railroad Company to the Above-stated Petition.

This respondent answering says:

1. It is informed and believes that the James & Mayer Buggy Co. manufacture buggies, carriages, etc. in the city of Cincinnati, State of Ohio.

2. This defendant and the defendants above named are common carriers and under a common arrangement for continuous carriage or shipment are engaged in the transportation of passengers and property wholly by rail between Cincinnati, in the State of Ohio, and Chattanooga, in the State of Tennessee, and between Chattanooga, in the State of Tennessee, and Atlanta, in the State of Georgia, and Augusta, in the State of Georgia.

3. The rate of freight on buggies, carriages, etc., from Cincinnati, Ohio, to Atlanta, Georgia, the distance being about 473 miles, was, at the date named, one dollar and one cent per hundred pounds in less than car-load lots, knocked down, boxed or crated and released. This was an unauthorized rate. The proper rate, Cincinnati to

Atlanta, should have been one dollar and seven cents per hundred pounds.

4. The rate of freight on buggies, carriages, etc., from Cincinnati, Ohio, to Augusta, Georgia, over the same lines of railroad and the railroad of this respondent, the distance being about 645 miles, is also one dollar and seven cents per hundred pounds.

19 5. This respondent says that it has no arrangement with the roads between Atlanta, the western terminus of respondent's railroad, and Cincinnati for through rates from Cincinnati to any station on the Georgia railroad other than Milledgeville—where respondent competes with the Central Railroad of Georgia—and the terminal stations of Augusta, Athens and Washington: That if a through bill of lading is issued at Cincinnati for freight from that point to Social Circle, a station on respondent's railroad, the rate is made as follows, to wit: By adding to the rate from Cincinnati to Atlanta respondent's local rate from Atlanta to Social Circle; thus, the rate from Cincinnati to Atlanta, as given above, is $1.07 per 100 lbs., to which is added respondent's local rate from Atlanta to Social Circle, to wit, 30 cents per 100 lbs., making a through rate from Cincinnati to Social Circle of $1.37 per 100 lbs. Respondent does not quote any through rate from Cincinnati to any stations on its railroad except Milledgeville and the terminal stations above named; but of course its local tariff, as fixed by the Georgia railroad commission, is known to the initial road at Cincinnati.

6. Respondent says that the rate from Atlanta to Social Circle is just and reasonable; also, that the rate from Cincinnati to Social Circle is just and reasonable, and not obnoxious to any provision of the interstate commerce act by reason of not being just and reasonable.

7. Respondent further says that the through rate from Cincinnati to Augusta, though the same as from Cincinnati to Atlanta, is not unlawful under section four of the Interstate Commerce act, because said rates are charged not under substantially similar circumstances and conditions.

In explanation of this statement, respondent says that at Baltimore, Maryland, and other eastern cities, large manufactories of buggies, carriages, etc., exist and that the product of these
20 factories is transported from said places to Augusta at such rates, that if this respondent and its connections between Atlanta and Cincinnati charge a rate higher than one dollar and seven cents per hundred pounds from Cincinnati to Augusta, no freight of this charactor would come over the Georgia railroad; for the product of the eastern factories would be delivered in Augusta at rate which would exclude the Cincinnati product from the Augusta market.

8. This respondent says that while no arrangement exists, as above stated, for a through bill of lading from Cincinnati to Social Circle, as a matter of fact the shipment from Cincinnati to Social Circle by the petitioner was made on a through bill of lading, the rate of which was fixed, as hereinbefore stated, by adding this re-

spondent's local rate from Atlanta to Social Circle to the through a rate from Cincinnati to Atlanta.

Having fully answered, this respondent prays, etc.

JOS. B. CUMMING,
Gen. Counsel, &c.

STATE OF GEORGIA,
Richmond County.

Before me, a notary public, duly commissioned and sworn in and for said county, personally appeared John W. Green, who on oath says that he is the general manager of the Georgia Railroad Company, and that the facts stated in the foregoing answer, so far as they are stated of his own knowledge, are true, and so far as they are stated on information and belief, he believes them to be true.

JNO. W. GREEN.

Sworn to and subscribed before me this 8 day of November, 1889.
[SEAL.] W. T. RICHARD, *N. P.*

21 EXHIBIT D.

22 JAMES & MAYER BUGGY COMPANY
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, The Western & Atlantic Railroad Company, and The Georgia Railroad Company.

Answer of the Cincinnati, New Orleans & Texas Pacific Railway Company.

The Cincinnati, New Orleans & Texas Pacific Railway Company for answer to the petition of the complainant herein says:

1. It admits that the James & Mayer Buggy Company manufactures buggies, carriages, &c., in the city of Cincinnati, State of Ohio.

2. That the above-named defendants are common carriers engaged in the transportation of passengers and property wholly by railroad between Cincinnati, Ohio, and Atlanta, Georgia, and Cincinnati, Ohio, and Augusta, Georgia, but it says that said defendants are not under a common control, management or arrangement for continuous carriage or shipment, but that on the contrary the connection of this defendant with such carriage or shipments begins at Cincinnati, Ohio, and ends at Chattanooga, Tennessee; that of the Western and Atlantic Railroad Company begins at Chattanooga, Tennessee, and ends at Atlanta, Georgia, and that of the Georgia Railroad Company begins at Atlanta and ends at Augusta in the State of Georgia.

3. It admits that the first-class rate of freight published in the tariff of this defendant from Cincinnati, Ohio, to Atlanta, Georgia, a distance of about 477 miles, is $1.01 per 100 lbs.

4. It admits that the first-class rate of freight from Cincinnati,

Ohio, to Augusta, Georgia, a distance of about 648 miles, is also $1.01 per 100 lbs.

23 5. It admits that the first-class rate of freight from Cincinnati, Ohio, to Social Circle, Georgia, over the same line, the distance being about 525 miles (more or less), is $1.31 per 100 lbs.

It says that the power of this defendant over said rates of freight and the division thereof only extends to securing a reasonable compensation for the services performed in transporting merchandise from Cincinnati, Ohio, the northern, to Chattanooga, Tennessee, the southern terminus of its line; that its proportion of the rate of $1.01 to Atlanta, Georgia, is $71\frac{6}{10}$ cents, and that of the Western and Atlantic Railroad Company is $29\frac{4}{10}$ cents per 100 lbs.; that its proportion of the rate to Augusta, Georgia, from Cincinnati, Ohio, is $52\frac{6}{10}$ cents; that of the Western and Atlantic $21\frac{6}{10}$ and that of the Georgia railroad is $26\frac{8}{10}$ cents; that said rate to Atlanta is reasonable and just and a reasonable compensation for the services performed; that the rate to Augusta is the same as to Atlanta for the reason that such rate is governed by the rate from Baltimore and New York to Augusta and made on a lower basis than rates to Atlanta on account of water competition via Charleston, S. C., and Savannah, Ga., which operates to lower such rate to Augusta. The relative distance hauled and the proportionate amount of services performed by this defendant in carrying said goods to Augusta being less than the distance and service to Atlanta, the compensation of this defendant is relatively less.

As to the rate to Social Circle, Georgia, defendant says that such rate can only be made by this defendant by consent and permission of the Georgia Railroad Company, codefendant herein; that the transportation to said Social Circle can only be effected by the cooperation of the said Georgia railroad, said Social Circle being a station on its line and the said Georgia railroad stipulating and insisting that the said rate shall be 30 cents greater than the rate to Augusta and Atlanta. This defendant receives no part of or

24 allowance on account of the 30 cents additional charged to Social Circle, the same being purely a local rate charged by the Georgia railroad for transportation over its line from Atlanta to Social Circle.

Having fully answered, the defendant asks to be hence dismissed with its costs herein expended.

EDWARD COLSTON,
Gen. Counsel.

STATE OF OHIO, }
Hamilton County, } *ss:*

John C. Gault, being first duly sworn, says that he is the general manager of the Cincinnati, New Orleans & Texas Pacific Railway Company and that the facts set forth in the foregoing answer are true as he verily believes.

JOHN C. GAULT.

Sworn to before me and subscribed in my presence this 26th day of November, 1889.

[SEAL.] CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

25 EXHIBIT E.

26 At a general session of the Interstate Commerce Commission, held at its office in Washington the 21st day of February, A. D. 1890.

Present: Hon. Augustus Schoonmaker, Hon. Walter L. Bragg, Hon. Wheelock G. Veazey.

JAMES & MAYER BUGGY COMPANY
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, The Western & Atlantic Railroad Company, The Georgia Railroad Company.

This case having been assigned for hearing on this day at 10 o'clock a. m., was called, and no appearance having been made by either party at said hearing, and it appearing to the commission, from the complaint and answers in this proceeding and an examination of the tariffs of defendants on file, that a greater aggregate charge is made by the defendants for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance,

It is ordered, that the hearing of this case be postponed to the 21st day of March, 1890, at 10 o'clock a. m. at the office of the commission in Washington, D. C.

And it is further ordered, that the defendants be notified that the burden of proof is on them to justify the greater charge for the shorter distance alleged in the complaint herein.

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27 & 28 EXHIBIT F.

29 Before the Interstate Commerce Commission.

THE JAMES & MAYER BUGGY COMPANY
v.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, The Western & Atlantic Railroad Company, and The Georgia Railroad Company.

Complaint Filed October 18, 1889. *Answers Filed November* 8–29, 1889. *Depositions on Behalf of Defendants Filed June* 9, 1890. *Decided June* 29, 1891.

1. Same rate for longer and shorter distances.—Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for

longer distances, provided such carriers do not "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

2. Greater charge for shorter distances.—The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.
3. Same.—Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.
4. Same.—Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

Howard K. James and Louis G. Mayer, for complainant.
Edw. Colston, for C., N. O. & T. P. R. Co.
Joseph B. Cumming, for Georgia R. R. Co.
Joseph M. Brown, for W. & A. R. R. Co.

Report and Opinion of the Commission.

MORRISON, *Commissioner:*

The James & Mayer Buggy Company, buggy and carriage manufacturers of Cincinnati, Ohio, complains that the defendants are common carriers "under a common control, management or arrangement for continuous carriage or shipment," and charge the same rate, $1.01 per 100 pounds, for transporting vehicles shipped by complainants from Cincinnati, whether shipped to Atlanta, Georgia, a distance of about 474 miles, or to Augusta, Georgia, a distance of 645 miles, and charge 30 cents per hundred pounds more on such vehicles shipped to Social Circle, Georgia, a distance of 526 miles, than when shipped either to Atlanta or Augusta. That said shipments are made at first-class rates over the same lines; that the complainant ought not to be compelled to pay the same freight charge to Atlanta as to Augusta, 171 miles the greater distance, and ought not to be compelled to pay 30 cents per 100 pounds more to Social Circle than to Augusta, more distant by 120 miles, and that the defendants in charging more to Social

Circle, the shorter distance over the same line in the same
30 direction, than they charge to Augusta, are violating the fourth section of the act to regulate commerce.

The complainants ask that their complaint and charges may be investigated; that the defendants may be required and ordered to cease and desist from said alleged violation of the act to regulate commerce, and that the commission will make such further order as may be deemed necessary in the premises.

The Cincinnati, New Orleans & Texas Pacific Railway Company, answering, admits that complainant manufactures buggies in Cincinnati, Ohio, and that defendants are common carriers wholly by railroad between Cincinnati and Atlanta and Cincinnati and Augusta, but denies that defendants are under common control, management or arrangement for continuous carriage and avers that the connection of this defendant with such carriage or shipment begins at Cincinnati and ends at Chattanooga, Tennessee; that of the Western & Atlantic Railroad Company begins at Chattanooga and ends at Atlanta, and that of the Georgia railroad begins at Atlanta and ends at Augusta. It admits that the rates and distances from Cincinnati to Atlanta, Augusta and Social Circle, respectively, are correctly stated in the complaint, but denies that with the others this defendant makes a through rate to Social Circle, and says such rate is made by adding the local rate of said Georgia railroad from Atlanta to Social Circle to the rate from Cincinnati to Atlanta. It avers that of the rate of $1.01 to Atlanta its proportion for the distance over its line to Chattanooga is $71\frac{6}{10}$ cents, and that of the Western & Atlantic for the distance over its line from Chattanooga to Atlanta is $29\frac{4}{10}$ cents; that its proportion of the rate to Augusta for the distance over its line to Chattanooga is $52\frac{6}{10}$; that of the Western & Atlantic for the distance over its line from Chattanooga to Atlanta is $21\frac{6}{10}$, and that of the Georgia railroad for the distance over its line from Atlanta to Augusta, $26\frac{6}{10}$ cents; that the rate to Atlanta is no more than reasonable for the service rendered; and "that the rate to Augusta is the same as to Atlanta for the reason that such (Augusta) rate is governed by the rate from Baltimore and New York to Augusta and made on a lower basis than rates to Atlanta, on account of water competition via Charleston, S. C., and Savannah, Ga., which operates to lower such rate to Augusta. The relative distance hauled and the proportionate amount of services performed by this defendant in carrying said goods to Augusta being less than the distance and service to Atlanta, the compensation of this defendant is relatively less."

The answer of the Western & Atlantic Railroad Company denies that there is anything in the interstate commerce law which requires the making of a less rate from Cincinnati to Atlanta than from Cincinnati to Augusta, and as to the rate from Cincinnati to Social Circle, says, "that Social Circle is a local point on the Georgia railroad, and that company has not furnished us with any basis for working business to its local points other than taking the rate as in this instance from Cincinnati to Atlanta and adding their local. This company on this business has charged no more than if the

freight had stopped at Atlanta, or than it would receive going to any point within the same radius from Atlanta as that in which Social Circle is located. Further, as the rates to Augusta are brought down by water competition, we do not consider therefore that we have violated the interstate commerce law. The rate within itself is not unreasonable, and we cannot see that there is any discrimination against the parties at Social Circle, and this company furthermore is unable to control the local rates of any of its connections."

The Georgia Railroad Company, answering, admits that the defendants are common carriers under a common arrangement for continuous carriage or shipment by rail from Cincinnati, Ohio, to Atlanta, Milledgeville, Augusta, Athens, and to Washington, Georgia, on its line, and avers that the proper through rates from Cincinnati to Atlanta and to Augusta over defendants' lines on buggies and carriages in less than car-loads was and is $1.07, and not $1.01, as improperly quoted and stated. It admits that "as a matter of fact the shipment from Cincinnati to Social Circle by the petitioner was made on a through bill of lading," but denies that it quotes through rates, or is, with the other defendants, a through carrier from Cincinnati to Social Circle, or that it has with the other defendants any agreement or arrangement for a through bill of lading or through and continuous carriage from Cincinnati to Social Circle or any other point on the Georgia railroad other than above specified, and avers that when freight is billed through to Social Circle the rate is made by adding to the rate from Cincinnati to Atlanta this defendant's local rate from Atlanta to Social Circle.

Further answering, the Georgia Railroad Company avers that the rates from Cincinnati to Social Circle and Augusta respectively are not "obnoxious" to or in violation of the fourth section or other provision of the interstate commerce act. This averment it supports by further averment, statement and explanation, which is copied and appears hereafter in the conclusions of the commission.

In addition to the facts stated by the complainant and admitted in the answers of defendants the following facts are ascertained on investigation:

The Cincinnati, New Orleans & Texas Pacific Railway Company has a line extending from Cincinnati, Ohio, to Chattanooga,
31 Tennessee, a distance of 336 miles. From Chattanooga the Western & Atlantic has a line extending to Atlanta, Georgia, a distance of 138 miles. The main line of the Georgia railroad extends from Atlanta to Augusta, Georgia, a distance of 171 miles. Social Circle is a station on the main line of the Georgia railroad, 52 miles east of Atlanta, and 119 miles west of Augusta.

The Cincinnati, New Orleans & Texas Pacific railway carries freight over its own line to Chattanooga, and, in connection with the Western & Atlantic Railroad Company, is a common carrier on through bills at through rates from Cincinnati to Atlanta.

The last above named companies, in connection with the Georgia Railroad Company, are common and continuous carriers on through

bills from Cincinnati to Augusta, Social Circle and other points in Georgia on the lines of said Georgia railroad.

The rate on first-class freight, which includes such vehicles as buggies and carriages, over the two roads first above named, from Cincinnati to Atlanta, in less than car-loads, is $1.07 per hundred pounds, and is over the three defendant roads, from Cincinnati to Augusta, also $1.07 per hundred pounds. The defendant roads make through bills and continuous carriage of first-class and other freight at through rates from Cincinnati to Augusta, the southern terminus of the main line, and to the termini of the branch lines of the Georgia railroad at lower rates than to Social Circle, a less distant station on the main line of said Georgia railroad. To Athens, Milledgeville and Washington, stations on branch lines of said Georgia railroad, and more distant from Cincinnati than Social Circle, the defendants charge $1.07 per hundred pounds, the same as to Atlanta and Augusta, while they charge $1.37 to Social Circle, or 30 cents per hundred pounds higher than to Augusta, the eastern terminus, and a more distant station by 119 miles than Social Circle on the same line of said Georgia Railroad Company.

The established rate on first-class freight in less than car-loads, "released," of the Cincinnati, New Orleans & Texas Pacific Railway Company from Cincinnati to Chattanooga is 76 cents per hundred pounds; of the Western & Atlantic from Chattanooga to Atlanta is 57 cents per hundred pounds, and of the Georgia railroad, Atlanta to Social Circle, 30 cents, and Atlanta to Augusta, 64 cents, per hundred pounds, making the sum of the local rates over said roads from Cincinnati $1.33 to Atlanta, $1.63 to Social Circle, and $1.97 to Augusta.

The rates complained of are alleged to be, from Cincinnati to Atlanta and to Augusta, $1.01, and to Social Circle, $1.31, per hundred pounds, and the Cincinnati, New Orleans & Texas Pacific, the initial or sending company, admits these rates to be as alleged by complainants. But this is an error, and the established rates were and are, to Atlanta and Augusta $1.07, and to Social Circle $1.37, which established rates were and are collected on shipments made by complainant.

The through rates from Cincinnati to Atlanta, Augusta, Washington and some other stations on the Georgia railroad being less than the sum of the locals of the defendant roads, in making such through rates each of said roads accepts less than its local rates for the distances over its line. The proportion of the $1.07, the rate through from Cincinnati to Augusta received by the defendant companies, is, to the Cincinnati, New Orleans & Texas Pacific $55\frac{7}{10}$ cents; to the Western & Atlantic $22\frac{9}{10}$, and to the Georgia $28\frac{4}{10}$, which is in proportion to the distance over each road.

The division of the rate to Atlanta is also in proportion to distance—$75\frac{1}{10}$ cents to the Cincinnati, New Orleans & Texas Pacific, and $31\frac{1}{10}$ to the Western & Atlantic.

The division of the rate to Social Circle is the same as to Atlanta over the lines of defendants last above named—$75\frac{9}{10}$ and $31\frac{1}{10}$

cents—and to this the full local rate of 30 cents from Atlanta to Social Circle over the Georgia railroad is added.

The rates in force both from Cincinnati and from Baltimore and other Eastern cities to Atlanta, Augusta and other so-called "competitive" points are the rates established by the Southern Railway and Steamship Association, and the rates to such competitive points are the same by the all-rail and the part rail and part water, or coastwise routes. The rate on first-class freight including buggies and carriages in less than car-loads from Baltimore to Augusta, a distance of 611 miles, is 89 cents per hundred pounds. From the more distant cities of Philadelphia, New York and Boston to Augusta the rate is 96 cents per hundred pounds. There is no proof as to shipments of buggies or carriages to Augusta from Baltimore or other Eastern cities. In connection with carriers making the rate of 89 cents per hundred pounds of first-class freight to Augusta from Baltimore, the Georgia Railroad Company, one of the defendants, is a carrier from Baltimore, through Augusta, west to Social Circle, at the rate of $1.37, and through Augusta and Social Circle to Atlanta at the through rate of $1.07 per hundred pounds, Atlanta being 52 miles more distant than Social Circle from Baltimore.

On the facts thus admitted and ascertained, the Buggy Company alleges that the same charge from Cincinnati to Atlanta as to Augusta, 117 miles more distant than Atlanta, and the 30 cents per hundred pounds greater charge to Social Circle, 119 miles less
32 distant than to Augusta, are both charges complainant ought not to be compelled to pay, and that in making the higher charge to Social Circle than to Augusta the defendants violate the fourth section of the act to regulate commerce.

The answer of the Cincinnati, New Orleans & Texas Pacific Company states that the rate from Cincinnati to Atlanta is $1.01, and avers that to be a reasonable charge for the service rendered in the transportation of first-class freight in less than car-loads.

The Western & Atlantic Company avers that the charge being made to Atlanta is reasonable, without stating the amount of such charge. The only testimony offered or heard as to the reasonableness of the rate to Atlanta in question was that of the vice-president of the Cincinnati, New Orleans & Texas Pacific Company, whose deposition was taken at the instance of said company.

The witness testified that he had been in the railroad service about twenty-six years, and had much to do with rates during all that time, and that he considered $1.01 per hundred pounds in less than car-loads a reasonable rate on first-class freight from Cincinnati, Ohio, to Atlanta, Georgia.

This statement, or estimate, of the rate from Cincinnati to Atlanta, we believe, is fully as high as it may reasonably be, if not higher than it should be, but without more thorough investigation than it is now practicable to make we do not feel justified in determining upon a more moderate rate than $1 per hundred pounds of first-class freight in less than car-loads.

The rate on this freight from Cincinnati to Birmingham, Ala-

bama, is 89 cents as compared with $1.07 to Atlanta, the distances being substantially the same. There is apparently nothing in the nature and character of the service to justify such difference, or, in fact, to warrant any substantial variance in the Atlanta and Birmingham rate from Cincinnati.

The greater distance would ordinarily warrant higher charges to Augusta than would be justifiable to Atlanta on Cincinnati freight. Still, if the carriers, to secure traffic to Augusta, accepted Atlanta rates which afford less profit in proportion to distance, there can be no legal objection unless by accepting the same rates to Augusta said defendants may "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage." It is not claimed, nor does it appear that any such prejudice or disadvantage results from the acceptance of rates by the defendants which are somewhat lower than they might legally exact on Augusta shipments from Cincinnati.

By the act to regulate commerce distance is made a controlling consideration in determining the reasonableness of rates, and especially in determining relative transportation charges to various stations reached over the same line. This provision of the statute, if not qualified by exceptional or dissimilar circumstances and conditions as provided in the statute, forbids higher aggregate charges on Cincinnati shipments to Social Circle than to Augusta.

This rule is recognized and established by the fourth section of the act to regulate commerce, which declares:

"It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance."

The aggregate compensation of the defendants for the continuous carriage of first-class freight billed through from Cincinnati to Social Circle is higher than on like freight billed and carried in the same manner by the defendant from Cincinnati to Augusta. The distance from Cincinnati to Social Circle is shorter than to Augusta, the carriage is over the same line in the same direction, and the shorter distance is included in the longer.

In defense of the rate from Cincinnati to Atlanta, which is the same as to Augusta, the Cincinnati, New Orleans & Texas Pacific R'y Co. answers that water competition via Charleston and Savannah operates to lower Augusta rates, and in defense of the rate to Social Circle, which is greater than the rate to Augusta, the Western & Atlantic R. R. Co. answers that the rate to Augusta is brought down by water competition. In defense of the rates from Cincinnati both to Social Circle and to Augusta on its line, the Georgia R. R. Co. answers:

"Respondent says that the rate from Atlanta to Social Circle is just and reasonable; also, that the rate from Cincinnati to Social Circle is just and reasonable, and not obnoxious to any provision of the interstate commerce act by reason of not being just and reasonable.

"Respondent further says that the through rate from Cincinnati to Augusta, though the same as from Cincinnati to Atlanta, is not unlawful under section four of the interstate commerce act, because said rates are charged not under substantially similar circumstances and conditions.

"In explanation of this statement, respondent says that at Baltimore, Maryland, and other eastern cities, large manufactories of buggies, carriages, etc., exist, and that the product of these factories is transported from said places to Augusta at such rate that, if this respondent and its connections between Atlanta and Cincinnati charge a rate higher than one dollar and seven cents per
33 hundred pounds from Cincinnati to Augusta, no freight of this character would come over the Georgia railroad; for the product of the eastern factories would be delivered in Augusta at a rate which would exclude the Cincinnati product from the Augusta market."

The rates from Atlantic coast cities to Augusta are the same by water and rail as by the all-rail lines or routes, and are established by such lines competing with each other for business between Augusta and such Atlantic coast cities. The Georgia Railroad Company does not in its answer, or otherwise, mention or refer to water competition, or make any distinction between rates by water and by rail to Augusta from said Atlantic coast cities, and the existing rates by rail as well as by water are the rates from eastern cities to Augusta, which as defendants claim make a lower rate to Augusta than to Social Circle lawful. The several answers of the defendants taken together mean that the transportation for the shorter distance to Social Circle and the longer distance to Augusta is not "under substantially similar circumstances and conditions," and that the greater charge for the shorter distance is therefore lawful; that this alleged dissimilarity of circumstances and conditions results from the existence of large manufactories of buggies and carriages in Baltimore and other eastern cities between which cities and Augusta such transportation rates prevail that Cincinnati vehicles would be excluded from the Augusta market, which would be supplied by the product of such eastern factories if the defendants charged a rate to Augusta as high as the reasonable rate to Social Circle; and that the rates between eastern cities and Augusta, which are the same by rail and water, are made lower by reason of the existence of coastwise or water transportation routes between eastern cities and Augusta through Charleston and Savannah.

There is no contention that the alleged difference in circumstances and conditions has any relation to the cost of transportation of the freight for the shorter and longer distances from Cincinnati to Social Circle and Augusta, respectively, or that such alleged difference or dissimilarity has any reference to transportation by water or water

competition between Cincinnati and Augusta, or that such freight might or could be taken by any water or part-water route from Cincinnati to Augusta unless a rate is maintained from Cincinnati to Augusta lower than a reasonable rate to Social Circle.

The defendants seek to bring themselves within the exceptional circumstances and conditions of the statute and to justify the lower rates to Augusta because of the competition between Cincinnati and eastern cities for the buggy and carriage trade of the Augusta market in reaching which the eastern cities have the advantages of rail and water transportation while Cincinnati products must go by rail. Independent of the rate to shorter-distance points on their line defendants insist they may lawfully make such lower rate to the longer-distance point as will prevent eastern manufacturers more advantageously located from taking the Augusta market from Cincinnati manufacturers. The right to make the lower charge for the longer distance is averred to be necessary to secure the transportation of carriages from Cincinnati, which, without the advantage of such lower charge, would come from the factories of eastern makers.

The rate from Cincinnati is $1.07. From Baltimore both by rail and water it is 89 cents, or 18 cents per hundred pounds in favor of Baltimore. The fact that Cincinnati makers ship their product to a market in which they are in the matter of transportation at such disadvantage in competition with their rivals shows that the question of competing in the Augusta carriage market involves and depends upon commercial and other conditions than such as affect freight charges.

If the contention of the defendants is justified by the statute, and they can avail themselves of its exceptional provision and charge more for the shorter distance for the purpose of equalizing commercial conditions and adjusting trade relations between the cities of Cincinnati and Baltimore in the Augusta market, the same thing may be done to place Cincinnati carriage-makers on an equal footing with those of Augusta in the Augusta market, or to relieve any city from any disadvantage in markets of other cities, or to deprive all cities or places of production of any advantage resulting from their location. Such an interpretation would make the fourth section of the act practically inoperative, and with such a licence in rate-making carriers might give advantage to or build or destroy the carriage or other business of any city or locality.

The circumstances and conditions which would justify a lower rate from Cincinnati to Augusta than to Social Circle must have relation to the nature and character of the service rendered by the carrier in the transportation between Cincinnati and the places on the same line. The competition by water which would bring the transportation within the exception of the statute is competition in transportation to the longer-distance point and as to freight which if not carried to such longer-distance point by the defendant roads could reach such destination by water transportation.

The only witness in the case, an officer of one of the defendant companies, testified that the rates from eastern cities to Augusta are

affected by its proximity to the seaboard, and that he thought Social Circle too remote from the seaboard to be affected by steamship competition. The commission makes no formal finding
34 of fact, based on this testimony, as to the points at which rates are affected by coastwise or water competition between eastern cities and such points on the lines of the defendants, or any one of them. But the belief of the witness that steamship competition, which operated to lower rates at Augusta, did not extend as far from the coast as Social Circle, is not in accordance or consistent with the action of the defendant The Georgia R. R. Co., and is contradicted by this company in the rates maintained to points on its line from Baltimore and other eastern cities. With eastern connections, this company is a carrier from Baltimore, through Augusta and Social Circle, to Atlanta, and at the same rate, $1.07, charged by it, the said Georgia R. R. Co., and other defendants from Cincinnati, through Atlanta and Social Circle, to Augusta. While, with its connections east and west, respectively, the Georgia R. R. Co. makes the same charges from Baltimore through Augusta to Atlanta as from Cincinnati through Atlanta to Augusta, the said Georgia R. R. Co., with such coonections, makes the same rate, $1.37, to Social Circle from both Cincinnati and Baltimore, thus making the greater charge for the shorter distance to Social Circle as well when it is nearer to the coast than Atlanta as when farther from the coast than Augusta. In the light of these practices of the defendants, the influence of steamship or water competition extends to and operates to lower the rates at Atlanta, more distant from the seaboard, but does not extend or have the like effect on the charges made to the intermediate and less favored shorter-distance place, Social Circle.

The defendants unite in presenting their alleged separate or independent relations to each other in the matter of transportation between Cincinnati and Social Circle as a further, if not their chief, reason upon which they justify and declare the higher charge for the shorter distance lawful under the fourth section and other provisions of the act. It is averred in their several answers that they have no agreement or arrangement for through carriage, and that the rate on through bills to Social Circle is made by adding the local rate of the Georgia railroad from Atlanta to Social Circle to the through rate of the other two defendants from Cincinnati to Atlanta, while the rate is made through on a lower basis in which all the defendants unite, each abating something from its local rate in making the through rate to Augusta. Upon this averment the defendants assume that they are not through and continuous carriers from Cincinnati to Social Circle, and that as to such transportation and rates to Social Circle the defendants are not within or subject to the fourth section or other provision of the act to regulate commerce.

The billing and carrying through to Social Circle and to Augusta and other points on the Georgia railroad is by the same companies and over the same lines, and the carriage and traffic is none the less interstate because the rates to some points may be reasonable, and to others excessive, or because as between themselves the carriers

make and apportion the rates to Social Circle and Augusta on different bases.

What might be the relations of the Georgia Railroad Company to interstate traffic, or to what extent, if at all, it would be subject to the provisions of the act to regulate commerce were it operated as a State or local road and did not participate in interstate business, we need not now consider. But if said railroad company with the other defendants bill and carry such interstate traffic through to Social Circle and various other stations on the line of the Georgia Railroad Company, neither the defendants together, nor any one of them, can be permitted to deny that they are, or that any one of them is, as to such traffic and through carriage, engaged in interstate business, nor can they avoid the fourth section or other provision of the act by declaring that as to such traffic destined to Social Circle, a station on its line, the Georgia Railroad Company is a local carrier and not subject with the other defendants to the provisions of said act.

Goods shipped from Cincinnati, in the State of Ohio, destined to points on the Georgia railroad in the State of Georgia, are interstate traffic, and all the roads forming a part of the line over which such goods are carried are engaged interstate commerce.

The defendants will be required to cease and desist from making any greater charge in the aggregate on buggies, carriages and other freight of the first class carried in less than car-loads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta, and said defendants will cease and desist from making any charge for the transportation of such freight from Cincinnati to Atlanta in excess of $1 per hundred pounds. This order to be in force from and after the 20th day of July, 1891.

35 EXHIBIT G.

36 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of June, A. D. 1891.

Present: Hon. William R. Morrison, Hon. Walter L. Bragg, Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, commissioners.

THE JAMES & MAYER BUGGY COMPANY
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, The Western & Atlantic Railroad Company, and The Georgia Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly submitted by the parties upon the pleadings and testimony taken herein, the commission did, on the date hereof, to wit, the 29th day of June, 1891, make and file its report and opinion, containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order; and the commission having, as appears by said report

and opinion, found and decided, among other things, that the defendants by charging for the transportation in less than car-loads of buggies, carriages, and other articles classified by them as freight of the first class, a greater compensation in the aggregate for the shorter distance over the line formed by their several railroads from Cincinnati in the State of Ohio to Social Circle in the State of Georgia than for the longer distance over the same line in the same direction from Cincinnati aforesaid to Augusta in the State of Georgia, have violated the provisions of the act to regulate commerce; and the commission having further found and decided,

37 & 38 as appears by said report and opinion, that the rate or charge established by the defendants, The Cincinnati, New Orleans & Texas Pacific Railway Company and The Western & Atlantic Railroad Company, and now in force for the transportation of the articles above mentioned in less than car-loads from Cincinnati aforesaid to Atlanta in the State of Georgia is unreasonable and unjust and in violation of the provisions of the act to regulate commerce:

It is ordered and adjudged, that the defendants, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Western & Atlantic Railroad Company, and The Georgia Railroad Company, do, from and after the 20th day of July, 1891, wholly cease and desist from charging or receiving any greater compensation in the aggregate for the transportation in less than car-loads of buggies, carriages, and other articles classified by them as freight of the first class, for the shorter distance over the line formed by their several railroads from Cincinnati in the State of Ohio to Social Circle in the State of Georgia than they charge or receive for the transportation of said articles in less than car-loads for the longer distance over the same line from Cincinnati aforesaid to Augusta in the State of Georgia; and that said defendants, The Cincinnati, New Orleans & Texas Pacific Railway Company and The Western & Atlantic Railroad Company, do also, from and after the 20th day of July, 1891, wholly cease and desist from charging or receiving any greater aggregate compensation for the transportation of buggies, carriages, and said other first-class articles, in less than car-loads from Cincinnati aforesaid to Atlanta in the State of Georgia than one dollar ($1.00) per hundred pounds.

And it is further ordered, that a notice embodying this order be sent to each of the defendant corporations, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

39 EXHIBIT H.

40 UNITED STATES OF AMERICA, } ss:
District of Columbia. }

I, C. C. McCain, of Washington, in the District of Columbia, auditor of the Interstate Commerce Commission, being first duly sworn, on oath depose and say:

That the division in my charge has among its papers the tariffs and classifications required to be filed with the Interstate Commerce Commission by the provisions of section 6 of the act to regulate commerce; that I have examined the tariffs and classifications filed with the commission by The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, defendants in the cause heretofore pending before the Interstate Commerce Commission, entitled, The James & Mayer Buggy Company *v.* The Cincinnati, New Orleans & Texas Pacific Railway Company, The Western & Atlantic Railroad Company and The Georgia Railroad Company; that the records and files of the commission fail to disclose the fact that the defendants have ceased and desisted from making a greater charge in the aggregate on buggies, carriages and other freight of the first class carried in less than car-loads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta, nor have they ceased and desisted from making a charge for the transportation of such freight from Cincinnati to Atlanta in excess of one dollar per hundred pounds, as laid down in the order of the commission dated June 29th, 1891; but, on the contrary thereof, the rates in effect on such articles at the time of the rendition of the decision of the commission, that is to say, on June 29th, 1891, as well as on the 20th day of July, 1891, are still in effect, not
41 & 42 having been altered or modified by the said defendants as in and by said order they were required to be modified and altered.

C. C. McCAIN, *Auditor.*

Subscribed and sworn to before me at the city of Washington, District of Columbia, this 19th day of October, 1891.

[SEAL.] MARTIN S. DECKER,
Notary Public.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, eight in number, and marked A to H, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

[L. S.] In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this twenty-first day of October, 1891.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

——— ———,
Secretary of the Interstate Commerce Commission.

43 In the Circuit Court of the United States, Northern District of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

Petition under Interstate Commerce Act. Order of Notice to Defendants.

Order to Show Cause on December 1, 1891, *etc.*

These proceedings having been filed under "An act to regulate commerce," approved February 4, 1887, as amended March 2, 1889, and February 10, 1891, it is—

Ordered and directed by the court that the defendant corporations appear before the United States circuit court, at the court-room in Atlanta, Ga., on Tuesday, the 1st day of December, 1891, to answer said proceedings and to show cause why the prayer of the petition should not be granted. And it is further—

Ordered that a copy of this order be served on each of the corporations of this State by serving the principal officer of the same; and that the non-resident corporations be served by serving a copy of said order on the principal representatives of said corporations who can be found within this State, if there be such, and that in addition thereto said non-resident corporations be notified by sending a copy of this order in a registered letter to the president or chief officer of the same, wherever located. And it being represented to the court that copies of the petition or bill are printed and convenient (without holding the same to be necessary and proper notice under act above referred to), the clerk is directed to attach a copy of said petition or bill to each of said orders or notices and let them be served therewith.

In open court this 31st day of October, 1891.

WM. T. NEWMAN,
United States Judge.

Filed in clerk's office 31st day of October, 1891.

O. C. FULLER, *Clerk.*

Service.

The Georgia Railroad and Banking Company hereby acknowledges due and legal service of the within order and waives
44 service by the marshal; and has received a copy of the within order and a copy of the said original petition or bill, as named in the order.

This 7th November, 1891.

JOS. B. CUMMING,
GEO. HILLYER,
Defendant's Attorneys.

Filed in clerk's office 7th day of November, 1891.

O. C. FULLER, *Clerk.*

In pursuance of the within order I hereby certify that I have this day mailed a copy of this order and the petition filed in this case, by registered letter, to the president of the Cincinnati, New Orleans and Texas Pacific Railway Company, Cincinnati, Ohio, and to J. W. Thomas, president of the Western and Atlantic Railroad Company, Nashville, Tenn.

This November 11, 1891.

O. C. FULLER,
Clerk U. S. Circuit Court.

Personally served a copy of the within writ on J. L. Dickey, general freight agent of the Western and Atlantic railroad at Atlanta, Fulton county, Georgia, on November 11, 1891.

A. E. BUCK, *U. S. M.*
B. B. LANDERS, *Deputy.*

Personally served a copy of the within writ on J. W. McCollum, superintendent of the Western and Atlantic railroad, Atlanta, Ga. November 26, 1891.

A. E. BUCK, *U. S. M.*,
Per B. B. LANDERS, *Deputy.*

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*

Order Continuing Case for Term, etc.

By consent of parties, it is ordered that this case be continued until next term, and that the parties have ninety days from this date to take proof.

In open court, December 1, 1891.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 1st day of December, 1891.

O. C. FULLER, *Clerk.*

45 *Joint and Several Answer of the Louisville and Nashville Railroad Company and Central Railroad and Banking Company of Georgia.*

The joint and several answer of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, who are sued by the name of the "Georgia Railroad Company," to the petition filed by the Interstate Commerce Commission in the circuit court of the United States, sitting in equity for the northern district of Georgia, against the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic railroad, and these respondents, sued by the name of the Georgia Railroad Company.

I.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and is existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, Ohio.

II.

Respondents admit that the defendant, The Western and Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Atlanta, in said State.

III.

"The Georgia Railroad and Banking Company" is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and has its principal office at Augusta, in said State.

Said company is the owner of what is known as the "Georgia railroad," and on May 7, 1881, said company leased said railroad to William Wadley for ninety-nine years from April 1, 1881.

Respondents are jointly the assignee of the said original lessee, and they operate said railroad under the adopted name of the "Georgia Railroad Company," but there is no such corporation as the "Georgia Railroad Company."

IV.

Respondents admit that they, as assignees of said lease, and the said Cincinnati, New Orleans and Texas Pacific Railway Company, and a certain corporation then existing which was known as the Western and Atlantic Railroad Company, were, at the time of the committing of the acts wrongfully called grievances in this petition, common carriers, severally engaged in the transportation of persons and property by their said several lines of railroad from Cincinnati, in the State of Ohio, thence through the intermediate States
46 of Kentucky and Tennessee to Atlanta, Social Circle, and Augusta, in the State of Georgia. They had an arrangement or agreement between them for the continuous carriage or shipment of through freight from Cincinnati to Augusta at certain agreed through rates, but they were under no common control or management.

The charter of the corporation which then existed under the name of the Western and Atlantic Railroad Company expired by its own limitation on December 27, 1890; and the defendant now known as the Western and Atlantic Railroad Company is totally distinct from the former company which bore the same name.

V.

Respondents deny that the defendants were "duly impleaded" in any kind of a controversy before the Interstate Commerce Com-

mission, though it is true that some time in October, 1889, the James & Mayer Buggy Company, styling itself a manufacturing corporation, claiming to have been chartered under the State of Ohio, and claiming to have its principal office in Cincinnati, in said State, filed a petition before said commission, a copy of which petition is filed as Exhibit A to the petition in this case.

It will be seen that the said James & Mayer Buggy Company made no complaint except as to certain rates charged them on vehicles from Cincinnati, Ohio, to Atlanta and Social Circle, Georgia, and that the only complaint they made as to those rates was that they were higher than the rate to Augusta, Ga.

VI.

Respondents suppose it to be true that the old Western and Atlantic Railroad Company, whose charter expired December 27, 1890, filed its answer to said petition, and that Exhibit B to the petition in this case is a copy of said answer.

VII.

It is true that an answer was filed in the name of the Georgia Railroad Company to said petition, and Exhibit C to the petition in this case is a copy of said answer. Respondents here adopt the allegations of said answer as a part of this answer.

VIII.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to said petition, and that Exhibit D to the petition in this case is a copy of said answer.

47 IX.

Respondents suppose it to be true that said Interstate Commerce Commission on the 21st day of February, 1890, made an order, and that Exhibit E to the petition is a copy of said order.

Respondents were furnished with a copy of said order some time between the 21st day of February and the 21st day of March, 1890.

X.

Respondents have no knowledge, information, or belief as to whether said proceedings were continued from time to time until June 3, 1890, nor as to whether the said James and Mayer Buggy Company, or said Cincinnati, New Orleans and Texas Pacific Railway Company, or the old Western and Atlantic Railroad Company, or either of them, appeared by their respective officers or attorneys before said commission on June 3, 1890. No officer or attorney of the Georgia Railroad Company, or of these respondents, appeared on that occasion.

XI.

Respondents deny that it appeared to said commission that respondents had violated, in any respect, the provisions of the act of Congress entitled "An act to regulate commerce."

Respondents deny that said commission duly or legally determined the matters or things in controversy between said parties.

Respondents suppose it to be true that said commission, on or about June 29, 1891, made a report in writing in respect thereof, and that exhibit to the petition is a copy of said report. A copy of said report was furnished to respondents some time prior to July 3, 1891.

XII.

Respondents suppose it to be true that said commission formulated an order or notice in relation to the matters and things stated and charged in said petition. But respondents deny that said order was duly made, or that it was made agreeably to the requirements of the statute in such cases made and provided, or that it now remains in force or effect. Respondents suppose that it has never been vacated, set aside, altered, modified, or changed in any respect by said commission; they suppose that it is now on file in the office of said commission; and they suppose that Exhibit G to the petition is a copy of said order. Respondents were furnished with a copy of said order on or about July 3, 1891. The charter of the old Western and Atlantic Railroad Company having expired before said order was made and the proceeding not having been revived, said order was void as to said company; and, being joint in its nature, said order was also void as to respondents.

48 XIII.

Respondents suppose it to be true that the Cincinnati, New Orleans and Texas Pacific Railway Company and the defendant, now known as the Western and Atlantic Railroad Company, have not ceased or desisted from the acts wrongfully called violations of law and set forth in said report and order of said commission.

So far as these respondents are concerned they will state that on July 3, 1891, E. R. Dorsey, general freight agent of said Georgia Railroad Company, issued a circular to its connections earnestly requesting them that thereafter, in issuing bills of lading to local stations on said Georgia railroad, no rates be inserted east of Atlanta except to Athens, Gainesville, Washington, Milledgeville, Augusta, or points beyond. Neither before nor since the date of said circular have these respondents, operating said Georgia railroad been in any way parties to such through rates, if any, as may have been quoted, from Cincinnati or other Western points to any of the strictly local stations on said Georgia railroad. The stations excepted in said circular are not strictly local stations. Both before and since the date of said circular respondents have received at Atlanta east-bound freight destined to strictly local stations on the Georgia railroad and have charged full local rates to such stations,

said rates being such as they were authorized to charge by the Georgia railroad commission. Said rates are reasonably low and are charged to all persons alike without discrimination. A true copy of said circular is here filed as Schedule 1 to this answer.

XIV.

Respondents deny that they, or either of them, have been unmindful of their duty, or of any legal decision or determination of said commission, or that they have through their officers, servants, or attorneys, or otherwise, disregarded or set at naught the lawful authority of said commission, or that they have willfully or knowingly, or at all, violated or disobeyed any lawful order of said commission, or that they have neglected or refused to comply with any lawful order of said commission at Social Circle, Augusta, or Atlanta, Ga., or elsewhere. As to what the Cincinnati, New Orleans and Texas Pacific Railway Company or the defendant, now known as the Western and Atlantic Railroad Company, may have done, or failed to do, respondents have no knowledge or information except as hereinafter stated.

XV.

Respondents are informed and believe that since July 20, 1891, the Cincinnati, New Orleans and Texas Pacific Railway Company has continued to receive at Cincinnati, Ohio, for transportation, buggies and carriages in less than car-loads, and other arti-
49 cles classified as first-class freight, consigned to Social Circle and other strictly local stations on the Georgia railroad; that said Cincinnati, New Orleans and Texas Pacific Railway Company issues its own bills of lading at Cincinnati for such articles and guarantees to shippers that the total rate from Cincinnati to said strictly local stations shall not exceed $1.07 per 100 pounds from Cincinnati to Atlanta, plus respondent's local rate, whatever they may be to such strictly local stations.

The through rate of $1.07 from Cincinnati to Atlanta is made by agreement and arrangement between said Cincinnati, New Orleans and Texas Pacific Railway Company and the defendant, now known as the Western and Atlantic Railroad Company; and it is not higher than the rates charged by other lines of transportation which compete with those lines for business between Cincinnati and Atlanta. The Georgia railroad does not compete for business between Cincinnati and Atlanta, and, therefore, it is not consulted in regard to the through rates made between those points; it has no voice in making them and does not participate in their division.

Respondent is bound by law to furnish copies of the local tariffs of the Georgia railroad to any one who may desire them; and the Cincinnati, New Orleans and Texas Pacific Railway Company, with one of those tariffs in its possession, can readily ascertain what are the local rates to any of the strictly local stations on the Georgia railroad; and by adding such rates to $1.07 (the through rate from Cincinnati to Atlanta) it can easily see what will be the total rate

from Cincinnati to each of said strictly local stations, and can safely guarantee a total rate accordingly.

Respondents cannot possibly prevent the Cincinnati, New Orleans and Texas Pacific Railway Company or any other railway company from guaranteeing total rates which are in part based on the local rates of the Georgia railroad; nor can respondents refuse to carry freight because others have guaranteed total rates in regard to them. But respondents are no parties to any such guarantees, and they charge their full local rates to all strictly local stations, without the least regard to any guarantees that others may or may not have made.

Respondents' local rate on buggies and carriages in less than car-loads and on other first-class freight from Atlanta to Social Circle (a strictly local station) is 30 cents per 100 pounds, which added to the through rate of $1.07 from Cincinnati to Atlanta, makes the total through and local rate $1.37 per 100 pounds from Cincinnati to Social Circle.

Respondents aver that the through rate of $1.07 per 100 pounds from Cincinnati to Atlanta is fixed by active competition between various transportation lines and is reasonably low; the local rate of 30 cents per 100 pounds from Atlanta to Social Circle is fixed by the Georgia railroad commission and is reasonably low.

50 Respondents' connection with all such shipments begins for the first time at Atlanta and ends at Social Circle, both of which places are in the State of Georgia. In transporting such shipments from Atlanta to Social Circle they remain all the time in the State of Georgia, and respondents therefore submit that in their connection with such shipments they are not subject to the act of Congress to regulate commerce.

It is true that since July 20, 1891, the Cincinnati, New Orleans and Texas Pacific Railway Company has continued to receive at Cincinnati, for transportation, buggies and carriages in less than car-loads and other articles classified as first-class freight consigned to Augusta, Ga.; that said Cincinnati, New Orleans and Texas Pacific Company issues bills of lading at Cincinnati for such articles and guarantees to shippers that the through rate from Cincinnati to Augusta shall not exceed $1.07 per 100 pounds.

Said rate of $1.07 per 100 pounds from Cincinnati to Augusta is made by agreement and arrangement between said Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, known as the Western and Atlantic Railroad Company, and respondents, operating the Georgia railroad; and said rate is forced upon them by other transportation lines which can compete with them by carrying similar freights from Cincinnati to Augusta, and by other transportation lines which do compete by carrying similar freights to Augusta from Baltimore, Md., and other Eastern cities.

At Baltimore and other Eastern cities there exist large manufactories of buggies, carriages, and other vehicles which, with other articles classified as first-class freight, are carried from Baltimore and other Eastern cities at such rates that, if The Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, now

known as the Western and Atlantic Railroad Company, and respondents, operating the Georgia railroad, were to charge more than $1.07 per 100 pounds from Cincinnati to Augusta, no freight of that character would be shipped from Cincinnati to Augusta over the Georgia railroad, and Baltimore and Eastern cities would drive Cincinnati and other Western cities out of the Augusta market.

Respondents aver that there are various transportation lines which compete for business between Baltimore and other Eastern cities on the one side and Augusta on the other side. Some of those lines are all rail, some of them are all water, and some of them are part water and part rail lines. The competition thus produced by those lines makes the rate to Augusta from Baltimore and other Eastern cities as low as it is, and the lines operating from Cincinnati and other Western cities, through Georgia to Augusta, are forced to meet or approximate the rate from Baltimore and other Eastern cities to Augusta or retire from all that kind of business.

Respondents are advised and insist that it was not the intention of the act to regulate commerce to destroy the commerce between Cincinnati and Augusta; nor to drive Cincinnati and other
51 Western cities out of the Augusta market; nor to give to Baltimore and other Eastern cities a monopoly of that market; nor to deprive the Augusta market of the benefit of competition between Cincinnati and other Western cities on the one side and Baltimore and other Eastern cities on the other side. Respondents are further advised and insist that it was not the intention of said act to prevent The Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, known as the Western and Atlantic Railroad Company, and respondents, operating the Georgia railroad, from forming a through line from Cincinnati to Augusta, nor from carrying through freights over that line upon such through rates as may be necessary to meet or approximate the rates to Augusta from Baltimore and other Eastern cities.

XVII.

Respondents admit that the distance from Cincinnati to Social Circle is shorter than the distance from Cincinnati to Augusta. They admit that freight carried from Cincinnati to Augusta is carried over the same lines and in the same direction as freight which is carried from Cincinnati to Social Circle. They admit that the aggregate or total of the through rate from Cincinnati to Atlanta, added to the local rate from Atlanta to Social Circle, is greater than the through rate from Cincinnati to Augusta. But respondents aver that freights carried from Cincinnati to Augusta are not carried under substantially similar circumstances and conditions as freight carried from Cincinnati to Social Circle. Social Circle is a strictly local station on the Georgia railroad. No rival transportation lines reach that point, while at Augusta there exists the competition referred to; and the fact that competition exists at one point and does not exist at another creates not only a substantial

but a controlling dissimilarity between the circumstances and conditions under which freight is carried to those point respectively.

XVIII.

In the division of the through rate of $1.07 per 100 pounds from Cincinnati to Augusta, respondents operating the Georgia railroad receive only 28.4 cents per 100 pounds for transportation from Atlanta to Augusta. This is a low rate for the service rendered, but it is all that respondents can get. Respondents can carry at that rate at a slight profit, and it is to the benefit of the public, as well as of respondents, that respondents should be allowed to retain that source of revenue.

Respondents would much prefer to so increase the through rate from Cincinnati to Augusta that the proportion of it belonging to the Georgia railroad would amount to 64 cents per 100 pounds, which is the local first-class rate allowed by the Georgia railroad commissioners between Atlanta and Augusta. But it is im-
52 possible to get the connections of the Georgia railroad to allow it any such proportion of said through rate; nor could those connections afford to do so in justice to themselves, considering the relative mileage of the different roads forming the route.

The only way to increase the amount to be realized by the Georgia railroad from said through rate is to increase said through rate itself, which is impossible so long as water competition exists at Augusta.

If respondents are forced to charge no higher local rates to the strictly local stations on the Georgia railroad than the proportion which the Georgia railroad gets of the through rates from Cincinnati and other Ohio River points to Augusta, respondents will be compelled either to retire from such through business or to reduce the local rates to every strictly local station east of Covington, which is east of and distant from Atlanta only 41 miles. To reduce the local rate to all strictly local stations east of Covington from the rates allowed by the Georgia railroad commission to the proportion which that railroad now gets from the through rate from Cincinnati and other Ohio River points to Augusta, would reduce respondents' revenue annually not less than $50,000.

Respondents receive from the through business from Cincinnati and other Ohio River points to Augusta not less than $123,000 annually. It is, therefore, manifest that the Georgia railroad would be forced to abandon the through business. The effect would be to drive Cincinnati and other Western cities out of the Western market and to deprive that market of the benefit of the competition now afforded by those cities.

Instead of the James and Mayer Buggy Company getting a rate from Cincinnati to Augusta of $1.07 per 100 pounds as it now does, it would have to pay $1.71 per 100 pounds, while its Baltimore competitors with their water lines of transportation, would have a rate of about 89 cents per 100 pounds.

Respondents do not believe that the act to regulate commerce was ever intended to destroy it, and such would be the effect as to the

commerce involved in this case if the alleged order of the Interstate Commerce Commission should be enforced by decree in this case.

Having fully answered, respondents pray to be hence dismissed with their reasonable costs.

ED. BAXTER,
JOS. B. CUMMING,
Solicitors for Respondents.

STATE OF GEORGIA, *County of Richmond,* } ss:

Personally appeared before me, Irwin Alexander, clerk of the circuit court of the United States for the northeast division of the southern district of Georgia, Charles H. Phinizy, who is acting general manager of the Georgia railroad, and who, being duly sworn, deposed that the respondents in the foregoing answer are the
53 assignees of the original lessee of said railroad, and that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

C. H. PHINIZY.

Sworn to and subscribed before me this 11th day of December, 1891.

[SEAL.] IRWIN ALEXANDER,
Deputy Clerk United States Circuit Court,
Northeast Division, Southern District Georgia.

Filed in clerk's office.

(Circular No. 106, new series.)

GEORGIA RAILROAD COMPANY,
OFFICE GENERAL FREIGHT AGENT,
AUGUSTA, GA., *July* 3, 1891.

To connections.

DEAR SIR: Lately we have had some complications arising from connecting lines and their connections issuing through bills of lading quoting rates to our local stations, and to avoid such complications in the future we earnestly request that hereafter, in issuing bills of lading to our local stations, no rates be inserted east of Atlanta. This, of course, does not apply to business to Athens, Gainesville, Washington, Milledgeville, Augusta, or points beyond.

Please issue instructions to your agents that this rule will be effective at once, and advise me if you will comply with this request.

Yours truly,

E. R. DORSEY,
General Freight Agent.

Schedule No. 1 to answer of Louisville and Nashville Railroad Company and Central Railroad and Banking Company of Georgia to petition of Interstate Commerce Commission *vs.* Cincinnati, New Orleans and Texas Pacific Railway Company.

Filed in clerk's office, 11th day of December, 1891.

O. C. FULLER, *Clerk.*

but a controlling dissimilarity between the circumstances and conditions under which freight is carried to those point respectively.

XVIII.

In the division of the through rate of $1.07 per 100 pounds from Cincinnati to Augusta, respondents operating the Georgia railroad receive only 28.4 cents per 100 pounds for transportation from Atlanta to Augusta. This is a low rate for the service rendered, but it is all that respondents can get. Respondents can carry at that rate at a slight profit, and it is to the benefit of the public, as well as of respondents, that respondents should be allowed to retain that source of revenue.

Respondents would much prefer to so increase the through rate from Cincinnati to Augusta that the proportion of it belonging to the Georgia railroad would amount to 64 cents per 100 pounds, which is the local first-class rate allowed by the Georgia railroad commissioners between Atlanta and Augusta. But it is im-
52 possible to get the connections of the Georgia railroad to allow it any such proportion of said through rate; nor could those connections afford to do so in justice to themselves, considering the relative mileage of the different roads forming the route.

The only way to increase the amount to be realized by the Georgia railroad from said through rate is to increase said through rate itself, which is impossible so long as water competition exists at Augusta.

If respondents are forced to charge no higher local rates to the strictly local stations on the Georgia railroad than the proportion which the Georgia railroad gets of the through rates from Cincinnati and other Ohio River points to Augusta, respondents will be compelled either to retire from such through business or to reduce the local rates to every strictly local station east of Covington, which is east of and distant from Atlanta only 41 miles. To reduce the local rate to all strictly local stations east of Covington from the rates allowed by the Georgia railroad commission to the proportion which that railroad now gets from the through rate from Cincinnati and other Ohio River points to Augusta, would reduce respondents' revenue annually not less than $50,000.

Respondents receive from the through business from Cincinnati and other Ohio River points to Augusta not less than $123,000 annually. It is, therefore, manifest that the Georgia railroad would be forced to abandon the through business. The effect would be to drive Cincinnati and other Western cities out of the Western market and to deprive that market of the benefit of the competition now afforded by those cities.

Instead of the James and Mayer Buggy Company getting a rate from Cincinnati to Augusta of $1.07 per 100 pounds as it now does, it would have to pay $1.71 per 100 pounds, while its Baltimore competitors with their water lines of transportation, would have a rate of about 89 cents per 100 pounds.

Respondents do not believe that the act to regulate commerce was ever intended to destroy it, and such would be the effect as to the

commerce involved in this case if the alleged order of the Interstate Commerce Commission should be enforced by decree in this case.

Having fully answered, respondents pray to be hence dismissed with their reasonable costs.

ED. BAXTER,
JOS. B. CUMMING,
Solicitors for Respondents.

STATE OF GEORGIA, }
County of Richmond, } *ss:*

Personally appeared before me, Irwin Alexander, clerk of the circuit court of the United States for the northeast division of the southern district of Georgia, Charles H. Phinizy, who is acting general manager of the Georgia railroad, and who, being duly sworn, deposed that the respondents in the foregoing answer are the
53 assignees of the original lessee of said railroad, and that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

C. H. PHINIZY.

Sworn to and subscribed before me this 11th day of December, 1891.

[SEAL.] IRWIN ALEXANDER,
Deputy Clerk United States Circuit Court,
Northeast Division, Southern District Georgia.

Filed in clerk's office.

(Circular No. 106, new series.)

GEORGIA RAILROAD COMPANY,
OFFICE GENERAL FREIGHT AGENT,
AUGUSTA, GA., *July* 3, 1891.

To connections.

DEAR SIR: Lately we have had some complications arising from connecting lines and their connections issuing through bills of lading quoting rates to our local stations, and to avoid such complications in the future we earnestly request that hereafter, in issuing bills of lading to our local stations, no rates be inserted east of Atlanta. This, of course, does not apply to business to Athens, Gainesville, Washington, Milledgeville, Augusta, or points beyond.

Please issue instructions to your agents that this rule will be effective at once, and advise me if you will comply with this request.

Yours truly,

E. R. DORSEY,
General Freight Agent.

Schedule No. 1 to answer of Louisville and Nashville Railroad Company and Central Railroad and Banking Company of Georgia to petition of Interstate Commerce Commission *vs.* Cincinnati, New Orleans and Texas Pacific Railway Company.

Filed in clerk's office, 11th day of December, 1891.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

Answer of the Western and Atlantic Railroad Company.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS Pacific Railway Company and The Western and Atlantic Railroad Company and The Georgia Railroad Company. } In Equity. No. 390.

54 For defense to the above petition and as cause why the prayer should not be granted, The Western and Atlantic Railroad Company says:

That on the 27th day of December, 1890, it became a body corporate under the name and style of the Western and Atlantic Railroad Company under an act of the legislature of Georgia approved November 12, 1889, which provided for the lease of certain property of the State of Georgia known as the Western and Atlantic railroad, and that prior to said 27th day of December, 1890, this respondent was not in existence and therefore had no notice of the proceedings before the Interstate Commerce Commission in the matter of the petition of the James and Mayer Buggy Company and had no connection with the matters therein complained of.

Wherefore, respondent submits that the above-stated petition of the Interstate Commerce Commission should be dismissed, the prayer denied, and this respondent be allowed to go hence with its reasonable costs.

J. W. THOMAS, *President*,
Counsel for Respondent.

STATE OF TENNESSEE, }
Davidson County. }

In person appeared J. W. Thomas, who makes oath that he is president of the Western and Atlantic Railroad Company, and that the facts stated in the above defense are true.

Sworn to and subscribed before me this 9th December, 1891.

[SEAL.] J. T. SPAULDING,
Notary Public.

Filed in clerk's office 21st day of December, 1891.

O. C. FULLER, *Clerk.*

Circuit Court of the United States, Northern District of Georgia.

Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

The Cincinnati, New Orleans and Texas Pacific Railway Company for answer herein says:

(1.) It admits that it is a corporation under the laws of Ohio, operating as a common carrier of passengers and freight a rail-
55 road extending from Cincinnati, in the State of Ohio, to Chattanooga, in the State of Tennessee, which places are the termini of said railway.

(2.) It further admits that the defendant, The Western and Atlantic Railroad Company, is a common carrier from Chattanooga, Tenn., to Atlanta, Ga., and that the defendant, The Georgia Railroad Company, is a common carrier from Atlanta, Ga., by way of Social Circle, to Augusta, Ga., and that freight is carried by this respondent and its codefendants from Cincinnati to points herein named without break of bulk. It says that defendants in this case are not under any common control or management.

(3.) This defendant admits that the proceedings before and by the Interstate Commerce Commission took place as averred in the petition herein, but this defendant denies that at said hearing before said Interstate Commerce Commission it was made to appear that this defendant had violated the provisions of the act entitled "An act to regulate commerce," in the respects charged in the petition before said Interstate Commerce Commission, and denies that said commission legally determined the matters and things in controversy and at issue between the parties herein.

(4.) This defendant says it admits that said commission made said report, but says that many of the conclusions of fact found therein are not true and are not justified by the evidence produced at said hearing, and says that the conclusions of law contained in said report and the interpretation thereby given to the provisions of said act to regulate commerce are not correct and do not accord with the true construction of said act.

(5.) This defendant admits that said commission did formulate the order mentioned in this case and that notice thereof was given to this defendant, but denies that the said order was of any binding or legal effect.

(6.) This defendant admits that the rate of freight on merchandise of the first class from Cincinnati, Ohio, to Atlanta, Ga., a distance of 474 miles, is $1.07 per 100 pounds, and that the rate from Cincinnati to Augusta, Ga., a distance of 645 miles, is the same. It says that these rates are made by an agreement between the Georgia Railroad Company, the East Tennessee, Virginia and Georgia Rail-

way Company, the Western and Atlantic Railroad Company, and this defendant, and are divided between the companies performing the service according to the proportion which the mileage of each road bears to the whole distance. This defendant further says that the Georgia Railroad Company, which owns the railroad from Atlanta to Augusta, always demands and receives its local rates on business from Cincinnati to any point between Atlanta and Augusta; so that, as far as this defendant is concerned, there is no rate fixed by agreement on merchandise from Cincinnati to
56 Social Circle or other local points on said Georgia Railroad Company's road, but the first-class rate from Cincinnati to Atlanta being $1.07 per 100 pounds and the first-class rate of the Georgia Railroad Company from Atlanta to Social Circle being 30 cents per 100 pounds (as fixed by the railroad commission of Georgia), the addition of these two rates constitutes the first-class rate of $1.37 per 100 pounds from Cincinnati to Social Circle; thus, while there is no rate between Cincinnati and Social Circle fixed by agreement, yet there does exist, by reason of the said rate from Cincinnati to Atlanta and by reason of the rate from Atlanta to Social Circle, a total rate of $1.37 per 100 pounds from Cincinnati. This defendant says that the above-mentioned rates are reasonable and proper and that they in no respect violate the act to regulate commerce; and that although the total rate from Cincinnati to Social Circle is greater than it is to Augusta, Ga., a more distant point on the same line, nevertheless this defendant says there are and have been circumstances and conditions justifying a less rate to Augusta than to Social Circle.

(7.) This defendant further says that it makes, and has made, no rate whatever to Social Circle, and that on shipments to Social Circle the only compensation received by this defendant is a proportion according to its mileage between Cincinnati and Chattanooga of the rate from Cincinnati to Atlanta.

And having fully answered, this defendant asks to be hence dismissed with its costs.

EDWARD COLSTON, *Cincinnati, Ohio,*
CALHOUN, KING & SPALDING,
Atlanta, Ga.,
Attorneys for Defendant, The Cincinnati, New Orleans and Texas Pacific Railway Company.

STATE OF OHIO, *Hamilton County,* } ss:

D. Miller, being by me first duly sworn, says that he is traffic manager of defendant, The Cincinnati, New Orleans and Texas Pacific Railway Company, and that the allegations to the foregoing answer are true, as he believes.

D. MILLER.

Sworn to before me and subscribed in my presence this 19th day of December, A. D. 1891.

[SEAL.]

CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

Filed in clerk's office 21st day of December, 1891.
O. C. FULLER, *Clerk.*

57 The Circuit Court of the United States for the Northern District of Georgia, Sitting in Equity at Atlanta, Ga.

Order Extending Time to Take Testimony.

THE INTERSTATE COMMERCE COMMISSION
against
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY and Others.

In the above-stated case it is ordered that the time limited for taking testimony be extended from Monday, 14th of March, as heretofore ordered, to Monday, the 18th of April.

In open court, this February 26, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office February 26, 1892.
O. C. FULLER, *Clerk.*

The Circuit Court of the United States for the Northern District of Georgia, Sitting in Equity at Atlanta, Ga.

Order Appointing Will. Haight, Esq., Special Examiner.

THE INTERSTATE COMMERCE COMMISSION
against
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, the Last Two Named Defendants Being Sued by the Name of the Georgia Railroad Company.

By consent of the parties in the above-stated case it is ordered that Will. Haight, Esq., be, and he is hereby, appointed special examiner in said case, and is hereby directed, acting as such examiner, to take the testimony in said case at Atlanta, such as is proper to be so taken therein, and is hereby empowered as such to fix the time or times of taking such testimony, with instructions to conclude the taking of such testimony by or before the 18th day of April next (being the time allowed by previous order made in the cause), unless said time be further extended by order of this court or some of the judges thereof. Said special examiner is hereby authorized to call to his aid a competent stenographer for taking down the questions and answers, and will report the testimony taken before him, certified under his hand, without findings upon the same either in matters of law or of fact.

58 The clerk of this court will issue subpœnas for such witnesses as may be desired by either party to testify before said examiner.

Atlanta, Ga., March 4, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office March 4, 1892.

O. C. FULLER, *Clerk.*

Circuit Court of the United States for the Northern District of Georgia.

Order Appointing Mark J. McCord Examiner Pro Hac Vice.

INTERSTATE COMMERCE COMMISSION
vs.
CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et als.*

It appearing to the court that Mr. Will. Haight, examiner in the above cause, is out of the State, and that it is desirable that certain evidence be taken during his absence, by consent of counsel it is ordered by the court that Mr. Mark J. McCord be appointed examiner *pro hac vice* to take the evidence in said cause.

WM. T. NEWMAN,
Judge United States Court, Northern District of Georgia.

We agree to the above.

GEORGE HILLYER,
Attorney for Defendants.
S. A. DARNELL,
United States Attorney.

Filed in clerk's office 13th day of April, 1892.

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD,
Deputy Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

Stipulation to Waive Filing of Record of Suit Before Interstate Commerce Commission.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.* } No. —.

In this case it is stipulated by counsel representing both parties, that on or about October 24, 1891, Messrs. L. N. Trammell,
59 Allen Fort, and Virgil Powers, constituting and composing the railroad commission of the State of Georgia, filed a pe-

tition before the Interstate Commerce Commission against the Clyde Steamship Company, the South Carolina Railroad Company, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, the Central Railroad and Banking Company of Georgia (the last two named being lessees of the Georgia railroad), and other railroad companies, averring (among other things) that the defendants to said petition had theretofore and then did charge and receive more and greater compensation in the aggregate on each class of freight shipped from the city of New York and other Eastern points to the towns and stations of Greensboro', Madison, Social Circle, Covington, Conyers, and Stone Mountain, the same being "local" stations on the Georgia railroad, than they contemporaneously charged and received for like kind of freight from New York and other Eastern points to the city of Atlanta, which is at a greater distance from the city of New York than either or any of said local stations on the Georgia railroad.

Said petition charges that said through rates to said local stations on the Georgia railroad charged and collected by the defendants thereto, as aforesaid, were and are unreasonable and discriminating in their nature and are in violation of the fourth section of the act of Congress entitled "An act to regulate commerce," and said petition prays that the defendants therein may be commanded to cease and desist from said alleged violations of said act.

Said petition has been duly answered by the defendants thereto, a hearing has been had at which testimony was taken upon both sides, but the case has not yet been submitted.

Both parties to this agreement reserve the right to bring in the whole record of said cases for the better understanding of this agreement, and, subject to all objections as to relevancy and competency, it is agreed that this case shall be heard as if a duly certified transcript of the record and proceedings in said case had been filed as evidence in this case, unless either party shall hereafter desire to file such certified copies, which may be done at any time, without prejudice, before the cause is heard by the said circuit court.

A. G. SAFFORD,
Counsel for Petitioners.
ED. BAXTER,
Counsel for Defendants.

Filed in clerk's office May 17, 1892.

W. C. CARTER,
Deputy Clerk.

60 Circuit Court of the United States for the Northern District of Georgia.

Order Appointing Will. Haight, Esq., Commissioner to Take Testimony for Plaintiff.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS Pacific Railway, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. } In Equity. No. 390.

It is ordered that William Haight, Esq., be, and he is, appointed commissioner to take testimony for the plaintiff in the above-stated case, as provided in the orders heretofore granted in this case for that purpose, and that all the evidence in said case be completed on or by the 11th day of July, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in the clerk's office 27th day of June, 1892.
O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

Agreement as to Argument.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. } No. 390. In Equity.

The parties by their counsel in the above-stated case in open court consenting thereto, it is ordered that the argument in the above-stated case be heard on the 18th day of July, 1892, at Charlottesville, Va., or such other place as the presiding judge may direct.

We agree to the above order.

S. A. DARNELL,
U. S. Attorney.
ROBERT L. BERNER,
Attorney for U. S. Interstate Commerce Commission.
GEO. HILLYER,
Solicitor for Georgia Railroad and Banking Company.
PAYNE & TYE,
Solicitors for the Western and Atlantic Railroad Company.

Filed in clerk's office 28th day of June, 1892.
O. C. FULLER, *Clerk.*

61 In the Circuit Court of the United States, Northern District of Georgia.

This paper having been presented to me with the consent of counsel attached, I am of the opinion that I have no power to order a hearing in the case stated herein at Charlottesville, Va. I assent, however, to the agreement of counsel to let the cause be argued at that place, or such other place as the court may direct; the decision when reached to be rendered at Atlanta, provided I notify counsel, as I have stated to them, to that effect by the 15th instant.

This July 4, 1892.

WM. T. NEWMAN, *U. S. Judge.*

Filed in clerk's office 4th day of July, 1892.

O. C. FULLER, *Clerk.*

In United States Circuit Court, Northern District of Georgia.

Order Allowing Plaintiff and Defendant- until the 18th of July to Take Testimony, etc.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE GEORGIA RAILROAD AND BANKING COMPANY *et al.* } In Equity. No. 390.

It is ordered that the plaintiff and defendants in the above-stated case have until the 18th instant in which to take testimony before Will. Haight, Esq., who is hereby appointed commissioner to take the same under the same provisions as stated in the former order of this case for this purpose.

This order not to interfere with the argument on the 18th if the court should determine to hear the same on that day.

In open court this July 2, 1892.

WM. T. NEWMAN,
United States Judge.

Filed in the clerk's office July 2, 1892.

O. C. FULLER, *Clerk.*

Circuit Court of the United States, Northern District of Georgia.

Notice Requiring Testimony of Witnesses Hand and Bacon to be Taken by Oral Examination.

INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*, Defendants.

To counsel for complainant, The Interstate Commerce Commission:

You are hereby notified that the Cincinnati, New Orleans and Texas Pacific Railway Company requires the testimony of
62 the witnesses, Hand and Bacon, to be taken orally and not upon interrogatories, and that the undersigned, as counsel for

the Cincinnati, New Orleans and Texas Pacific Railway Company, be given reasonable notice of the time and place at which such testimony shall be taken, in order that he may attend and cross-examine said witnesses. Notice by mail will be sufficient.

EDWARD COLSTON,
Counsel for the Cincinnati, New Orleans and Texas Pacific R'w'y Co., 35 W. Fourth Street, Cincinnati, Ohio.

N. B.—You are respectfully referred to equity rule 67, as amended by order of the Supreme Court of the United States May 2, 1892. See 144 U. S., p. 689.

Service of the within notice acknowledged and copy received this July —, 1892.

S. A. DARNELL,
Per C. C. HALEY.

Filed in clerk's office 9th day of July, 1892.
O. C. FULLER, *Clerk.*

Circuit Court of the United States, Northern District of Georgia.

Notice to Complainant.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*, Defendants. } In Equity.

The complainant in this case is respectfully notified that the defendant The Cincinnati, New Orleans and Texas Pacific Railway Company demands that the testimony of witnesses, W. T. Knox, J. G. Shepherd, A. M. Colton, and —— Robinson, proposed to be taken on behalf of complainant, be taken upon oral examination and not upon interrogatories, and that the undersigned, counsel for this defendant, be notified of the time and place when and where said testimony shall be taken so that he may have reasonable opportunity to be present at the examination of said witnesses and to cross-examine the same. Notice to him by mail will be sufficient.

EDWARD COLSTON,
35 *W. Fourth Street, Cincinnati, Ohio, Attorney for the Cincinnati, New Orleans and Texas Pacific R'w'y Co.*

N. B.—Your attention is respectfully called to equity rule 67, amended by Supreme Court of the United States May 2, 1892. (See 144 U. S., p. 689.)

63 Service of the within notice acknowledged, and copy received this July 11, 1892.

S. A. DARNELL,
Per C. C. HALEY.

Filed in clerk's office 11th day of July, 1892.
O. C. FULLER, *Clerk.*

Order Setting Down Case for Special Hearing with Full Bench.

INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY *et al.*

On suggesting to the court that the importance of this case would call for a full bench, it is ordered that this case go down for special hearing by preference on the first day his honor, Judge Pardee, can be present to sit in the case, and that other cases give way to this case on that occasion.

November 28, 1892.

WM. T. NEWMAN,
United States Judge.

Filed in clerk's office 28th day of November, 1892.

O. C. FULLER, *Clerk.*

Certificate, Stipulation, and Depositions.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, and acting under and by the authority of said commission, certify that the following is a correct transcript of the docket entries in the case of The James and Mayer Buggy Company against The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, being No. 245 of the cases brought before the Interstate Commerce Commission:

1889.
Oct. 18. Complaint filed.
21. Copy complaint and notice to answers sent carriers.
21. Notice sent complainant.
Nov. 8. Answer of Western and Atlantic Railroad Company filed.
11. Answer of Georgia Railroad Company filed.
29. Answer of Cincinnati, New Orleans and Texas Pacific Railway Company filed.
1890.
Jan. 3. Case assigned for hearing at Washington, D. C., February 2, 1890, 10 a. m.
12. Notice filed by Cincinnati, New Orleans and Texas Pacific Railway Company that it does not expect to appear at hearing.

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Feb. 21. Hearing called. No appearance. Case reassigned for hearing on March 21, 1890, 10 a. m., and orders entered that burden of proof is on the defendants.

Mar. 15. Hearing continued indefinitely by commission on account of pendency of investigation of food products ordered by United States Senate.

May 9. Case assigned for hearing at Washington, Tuesday, June 3, 1890, 10 a. m.

June 3. Hearing called. No appearance.

9. Deposition of C. C. Harvey in behalf of defendant filed.

29. Report and opinion filed.

Ordered that defendant do, from and after July 20, 1891, cease and desist from charging more for the transportation in less than car-loads of buggies, carriages, and other first-class articles for the shorter distance from Cincinnati, Ohio, to Social Circle, Ga., than for the longer distance over the same line from Cincinnati, Ohio, to Augusta, Ga., and that the defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company and The Western and Atlantic Railroad Company, do also, from and after July 20, 1891, cease and desist from charging more for the transportation of buggies, carriages, and other first-class articles in less than car-loads from Cincinnati to Atlanta, Ga., than $1 per 100 pounds.

Oct. 17. It appearing that above order has not been obeyed by defendants, ordered that a petition to the circuit court of the United States for the northern district of Georgia be prepared and filed, praying for the enforcement of said order.

22. Petition forwarded for filing, and Hon. Simon A. Darnell, United States attorney for the northern district of Georgia, requested to prosecute the same under the direction of the attorney general. Letter and copy of petition also sent to attorney general.

Nov. 9. Copy of order of notice to appear in court, at Atlanta, December 1, 1891, and answer and show cause why the prayer of petition should not be granted received, said order being directed to defendants.

Exhibit A, annexed to the petition of the Interstate Commerce Commission in equity case No. 390, pending in the circuit court of the United States for the northern district of Georgia, against The Cincinnati, New Orleans and Texas Pacific Railway Company and others, is a copy of the complaint, above mentioned.

Exhibit B, in said cause, is a copy of the answer of the Western and Atlantic Railroad Company, above mentioned.

Exhibit C, in said cause, is a copy of the answer of the Georgia Railroad Company, above mentioned.

Exhibit D, in said cause, is a copy of the answer of the Cincinnati, New Orleans and Texas Pacific Railway Company, above mentioned.

Exhibit E, in said cause, is a copy of the order issued by the Interstate Commerce Commission, February 21, 1890, above mentioned.

Exhibit F, in said cause, is a copy of the report and opinion of the commission, above mentioned.

The deposition of C. C. Harvey, in behalf of defendants, filed June 9, 1890, there was no deposition, other than that of said Harvey, above mentioned, as filed June 9, 1890; a copy of said deposition is annexed to this certificate; nor were any witnesses called by or in behalf of defendants or any of them at the hearing of said cause; nor were any witnesses called or depositions taken on behalf of the complainant.

In testimony whereof, I have hereunto set my hand, and have affixed the seal of the said Interstate Commerce Commission, this 12th day of December, A. D. 1892.

[SEAL.] EDW. A. MOSELEY, *Secretary.*

65 In the Circuit Court of the United States for the Northern District of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*
In Equity. No. 390.

It is hereby stipulated between the parties that the certificate of Edward A. Moseley, bearing date the 12th day of December, 1892, may be treated as evidence in the above-entitled cause, subject to the objection on the part of the defendants that the same is incompetent, irrelevant, immaterial, and impertinent.

A. G. SAFFORD,
Solicitor for Petitioner.
ED. BAXTER,
Solicitor for Georgia Railroad Company.

Depositions of C. C. Harvey.

C. C. HARVEY, of lawful age, being first duly sworn, testified as follows:

Q. What is your name, residence, and occupation?

A. C. C. Harvey, Cincinnati; vice-president of the Cincinnati, New Orleans and Texas Pacific Railway Company.

Q. In your position as vice-president of the Cincinnati, New Orleans and Texas Pacific Railway Company what acquaintance have you with the rates of freight charged by that company to stations on its line, and the rates named by it to points beyond its line of road?

A. As vice-president, I am in charge of the traffic arrangements; the general freight agent, and the general passenger and ticket agent reporting to me direct, and no rates can be made by them to the local stations on our line without my consent. As to rates charged to points beyond the line of our road to, say, Atlanta or Augusta, we take freight at the published rates made by the Southern Railway and Steamship Association, of which, however, the

Cincinnati, New Orleans and Texas Pacific Railway Company is not a member.

Q. By what roads from Cincinnati are the cities of Atlanta and Augusta reached?

A. The Cincinnati, New Orleans and Texas Pacific railway runs from Cincinnati to Chattanooga, and there connects with the Western and Atlantic and the East Tennessee, Virginia and Georgia roads, which run to Atlanta, and freight for Augusta would pass over either of those roads and the Georgia railroad. The Louisville and Nashville also runs from Cincinnati and by connections with other roads reaches Atlanta and Augusta.

Q. By what authority, or association, is the rate on freight from Cincinnati to Atlanta and from Cincinnati to Augusta estab-
66 lished or fixed?

A. The rate is fixed by the Southern Railway and Steamship Association.

Q. What control has the Cincinnati, New Orleans and Texas Pacific Railway Company in the establishment of such rates?

A. None whatever.

Q. What portion of the through rate from Cincinnati to Atlanta and from Cincinnati to Augusta does the Cincinnati, New Orleans and Texas Pacific Railway Company receive for the service performed in hauling such freight as far as Chattanooga?

A. A mileage prorate.

Q. Does that mean that the Cincinnati, New Orleans and Texas Pacific Railway Company receives for hauling freight to Chattanooga, destined for Atlanta or Augusta, a compensation which bears to the total rate the same proportion as the distance from Cincinnati to Chattanooga bears to the distance from Cincinnati to Atlanta or from Cincinnati to Augusta?

A. Yes, sir.

Q. At the date the complainant's petition was filed, October 16, 1889, what was the rate on shipments of buggies in less than carload lots from Cincinnati to Atlanta?

A. $1.01.

Q. What was the rate to Augusta, Ga.?

A. The same rate.

Q. What reason, if any, existed for the fact that the same rate was charged to the more distant point?

A. That seems to be a matter for the Southern Railway and Steamship Association to say.

Q. Do I understand that the Southern Railway and Steamship Association established that rate?

A. Yes, sir.

Q. What voice in the establishment or alteration of such rate had the defendant, The Cincinnati, New Orleans and Texas Pacific Railway Company?

A. None whatever.

Q. What would have been the result if it had declined to abide by that rate, or charged a greater rate to Augusta?

A. The Cincinnati, New Orleans and Texas Pacific railway had

either to take freight at the rate made by the Southern Railway and Steamship Association, or retire from the business. If the Cincinnati, New Orleans and Texas Pacific railway would not abide by the rates made by the Southern Railway and Steamship Association to Atlanta or Augusta, the roads leading from Chattanooga would have charged their local rate from Chattanooga, and by that means the through rate would be much greater than that arranged by the association, and we would be unable to compete with other roads using the through rate made by the association.

Q. What amount of business would you thus have been able to obtain?

A. We could not get any.

Q. About how far is Augusta from the seaboard?

A. The distance from Augusta to Charleston is about 137 miles.

Q. Is the rate on freight from Cincinnati to Augusta in any way affected by the rate on similar commodities to Augusta by sea to Charleston and Savannah from eastern points—New York and Philadelphia?

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A. Yes; the rates to Augusta are affected by its proximity to the seaboard.

Q. Are the steamship lines from Boston, New York, and Philadelphia to Charleston and Savannah members of the Southern Railway and Steamship Association?

A. Yes, sir.

Q. What was the rate, on October 16, 1889, from Cincinnati to Chattanooga on buggies in less than car-load lots?

A. Seventy-six cents.

Q. What was, at that date, the rate from Cincinnati to Social Circle, Ga.?

A. It was the rate to Atlanta, $1.01, plus the local rate charged by the Georgia railroad from Atlanta to Social Circle, 30 cents, in all, $1.31.

Q. What portion, if any, of the additional 30 cents charged to Social Circle did the Cincinnati, New Orleans and Texas Pacific Railway Company receive?

A. No part thereof.

Q. What control, if any, could the Cincinnati, New Orleans and Texas Pacific Railway Company exercise over such local rate charged by the Georgia railroad to Social Circle?

A. It could exercise no control.

Q. Is Social Circle near enough to the seaboard to be affected by steamship competition?

A. I think not.

Q. By what authority, board, or association is the method of fixing rates to local points such as Social Circle, and from junction points such as Atlanta, adopted or put in force?

A. So far as I am aware there is no association having control of rates to local points such as Social Circle. The association deals with rates to and from competitive points or common points.

Q. The policy, then, with regard to making local rates to local

points of this character is determined by the road upon whose line the local point is situated?

A. I think you are correct.

Q. To what extent has the Cincinnati, New Orleans and Texas Pacific Railway Company the power to alter the position taken by the Georgia Railroad Company in making through rates from Cincinnati to Social Circle, so far as the local rate from Atlanta to Social Circle is concerned?

A. It has no power whatever. The Georgia railroad forwards to us its local tariff from Atlanta and other common points, and to make through rates to its local stations we are required to add its local to the rate to the common point.

Q. What would be the result if the Cincinnati, New Orleans and Texas Pacific Railway Company attempted to make any different charge from that so prescribed by the Georgia Railroad Company?

A. The Georgia Railroad Company would either increase the freight or look to the Cincinnati, New Orleans and Texas Pacific Railway Company to be paid its full local.

Q. The only alternatives, then, that exist are to include in the rate to Social Circle an arbitrary local of 30 cents, prescribed by the Georgia railroad, or refuse to take freight to that point?

A. Yes, that is the alternative.

68 Q. How far is Social Circle from Atlanta, and how far from Augusta?

A. Fifty-two miles from Atlanta and 119 miles from Augusta.

Q. What partnership, if any, exists between the Cincinnati, New Orleans and Texas Pacific Railway Company and the railroads by which Atlanta, Augusta, and Social Circle are reached from Chattanooga?

A. None.

Q. What common control, if any, exists over the roads named, including the Cincinnati, New Orleans and Texas Pacific railway?

A. None.

Q. Are such roads operated under any common arrangement?

A. No; they are distinct companies and work separately.

Q. Do I understand you to say that the Cincinnati, New Orleans and Texas Pacific Railway Company receives the same compensation for this class of property as its share of the rate from Cincinnati to Atlanta and from Cincinnati to Social Circle?

A. It receives exactly the same amount on a shipment to Social Circle as it does on a shipment to Atlanta.

Q. What can you say generally of the effect of water competition from Baltimore and New York upon the rates to Augusta?

A. The rates from eastern points to Augusta being affected by water competition, it is to the advantage of Cincinnati merchants to have as low rates to Augusta as to Atlanta, for thereby they are enabled to do business in Augusta that otherwise they would not be able to do.

Q. That otherwise would be given up to New York and Baltimore merchants?

A. Precisely.

Q. What experience have you had in the making, consideration, and comparison of railroad rates?

A. I have been in the railroad service for about twenty-six years, and have had a great deal to do with rates during the whole of my railroad service.

Q. Do you regard the rate of $1.01 to Atlanta as a reasonable rate on first-class freight?

A. I consider it reasonable.

Cross-examination by Mr. HOWARD K. JAMES:

Q. Is it not a fact that the rate from Cincinnati to Atlanta is greater than the rate from Cincinnati to a similar distance, either north, east, or west, and is it not a fact that the rate to Atlanta is much more in proportion than the rate to Mobile or New Orleans?

A. The rate to Atlanta is higher than to New Orleans, but the rates between Cincinnati and New Orleans are exceptionally low on account of the river competition.

Q. Well, now, would a change in the method of making rates by the Southern Railroad and Steamship Association necessarily increase the rates to the farther points, such as Augusta, rather than decrease them to the nearer points, such as Atlanta?

A. I cannot say what would be the action of anybody making the rates, if the same was taken out of the hands of the present association.

69 Q. Do you not think that the ultimate result would be to adjust rates so that it would be possible for your road to get business to Augusta, even if the rates were made strictly according to the interstate commerce law of proportionate distances?

A. The Cincinnati, New Orleans and Texas Pacific railway can have no voice in making a through rate to a common point not on its own road. That would have to be by agreement between the railroad companies interested from the point of shipment to destination.

C. C. HARVEY.

Examination of C. C. Harvey concluded.

Caption and certificate omitted.

Filed in clerk's office 23d day of December, 1892.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States.

Order Appointing M. J. McCord Special Examiner to Take Testimony.

INTERSTATE COMMERCE COMMISSION
vs.
THE GEORGIA RAILROAD AND BANKING COMPANY *et al.*

It appearing that Will. Haight, appointed as special examiner in the above-stated case, is absent from the city and State for providential reasons, it is ordered that M. J. McCord be, and he is hereby,

appointed special examiner to take the testimony in said case with all the powers granted in former orders.

Signed this December 30, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office December 30, 1892.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

Exception to Pleadings.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*
In Equity. No. 390.

Now comes the petitioner and excepts to and moves to strike from the pleadings so much of the answers of each and all of the defendants as set up, or seek to set up, any defense other than
70 the defense set up in the answers filed by the defendants to the original complaint before the Interstate Commerce Commission, for the following reasons:

First. Because said answers set up, or seek to set up, new and different circumstances and conditions for exempting the carriers from the operation of the long and short haul clause of the fourth section of the interstate commerce act; the same were never submitted to the commission for judgment thereon, and therefore cannot be argued as defenses against the enforcement of its order.

Second. Because the circuit court has no jurisdiction of the subject-matter contained in said answers setting up said new and different defenses until the same have been submitted to the commission.

Third. Because said answers set up matters by way of defense of which the interstate commission has original and exclusive jurisdiction, and of which the circuit court can acquire no jurisdiction until the same has been passed upon by the commission.

Fourth. Because the circuit court is a purely judicial body, and the regulation of interstate commerce is a purely legislative function, and that if the carriers can submit the question of regulating this species of commerce to the courts by an original question, which would be the practical result if allowed them to plead and set up new and different matters in the court, before submitting them to the commission, it would virtually and actually confer upon the court a legislative power, the power to regulate commerce, which they cannot acquire except by a strict compliance with the laws of the State.

These matters are apparent on the face of the record, and upon

each and every ground of the within petition prays judgment of the court.

ROBERT L. BERNER,
Special Counsel for Interstate Commerce Commission.

Filed in clerk's office 16th day of January, 1893.
O. C. FULLER, *Clerk*,
By GEO. S. BERNARD,
Deputy Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

Motion to Suppress Testimony.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*
In Equity. No. 390.

Now comes the petitioner and moves to suppress the testimony of each and every witness sworn for the defendants in the
71 present case and each and every piece of written evidence introduced by them for the following reasons:

First. Because this evidence was not introduced by the defendants or offered to be introduced by them in the hearing of the complaint before the Interstate Commerce Commission; and this is true, though it is apparent it could have been introduced.

Second. Because said evidence raises new and different issues and seeks to set up new and different circumstances and conditions; to authorize the charge of a greater rate for the shorter than the longer distance over the same line and in the same direction for like kind of property; all of which should have been presented to the commission at the hearing of the original complaint.

Third. Because it is the duty of defendant carriers, when arraigned for a violation of the fourth section of the interstate commerce act, to present each and every fact showing the dissimilar conditions and circumstances claimed by them to exempt them from the operation of the act, in order that the commission may perform the duty intrusted to them by Congress for regulating interstate commerce, and the defendants, having failed to do so in this instance, they are estopped from setting up such facts to prevent the enforcement of the order of the commission.

Fourth. Because the court has no jurisdiction to try any case other than the case made before the commission. It has no power to try a new and distinct case which was never submitted to the discretionary power of the commission.

Fifth. Because the question of whether a carrier in carrying the traffic under such circumstances and conditions as exempt it from the operations of the fourth section is a subject-matter of which the commission has original and exclusive jurisdiction, and of which the Federal court has no jurisdiction until the commission has exercised

appointed special examiner to take the testimony in said case with all the powers granted in former orders.

Signed this December 30, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office December 30, 1892.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

Exception to Pleadings.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*
} In Equity. No. 390.

Now comes the petitioner and excepts to and moves to strike from the pleadings so much of the answers of each and all of the defendants as set up, or seek to set up, any defense other than
70 the defense set up in the answers filed by the defendants to the original complaint before the Interstate Commerce Commission, for the following reasons:

First. Because said answers set up, or seek to set up, new and different circumstances and conditions for exempting the carriers from the operation of the long and short haul clause of the fourth section of the interstate commerce act; the same were never submitted to the commission for judgment thereon, and therefore cannot be argued as defenses against the enforcement of its order.

Second. Because the circuit court has no jurisdiction of the subject-matter contained in said answers setting up said new and different defenses until the same have been submitted to the commission.

Third. Because said answers set up matters by way of defense of which the interstate commission has original and exclusive jurisdiction, and of which the circuit court can acquire no jurisdiction until the same has been passed upon by the commission.

Fourth. Because the circuit court is a purely judicial body, and the regulation of interstate commerce is a purely legislative function, and that if the carriers can submit the question of regulating this species of commerce to the courts by an original question, which would be the practical result if allowed them to plead and set up new and different matters in the court, before submitting them to the commission, it would virtually and actually confer upon the court a legislative power, the power to regulate commerce, which they cannot acquire except by a strict compliance with the laws of the State.

These matters are apparent on the face of the record, and upon

each and every ground of the within petition prays judgment of the court.

ROBERT L. BERNER,
Special Counsel for Interstate Commerce Commission.

Filed in clerk's office 16th day of January, 1893.
O. C. FULLER, *Clerk*,
By GEO. S. BERNARD,
Deputy Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

Motion to Suppress Testimony.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*
In Equity. No. 390.

Now comes the petitioner and moves to suppress the testimony of each and every witness sworn for the defendants in the
71 present case and each and every piece of written evidence introduced by them for the following reasons:

First. Because this evidence was not introduced by the defendants or offered to be introduced by them in the hearing of the complaint before the Interstate Commerce Commission; and this is true, though it is apparent it could have been introduced.

Second. Because said evidence raises new and different issues and seeks to set up new and different circumstances and conditions; to authorize the charge of a greater rate for the shorter than the longer distance over the same line and in the same direction for like kind of property; all of which should have been presented to the commission at the hearing of the original complaint.

Third. Because it is the duty of defendant carriers, when arraigned for a violation of the fourth section of the interstate commerce act, to present each and every fact showing the dissimilar conditions and circumstances claimed by them to exempt them from the operation of the act, in order that the commission may perform the duty intrusted to them by Congress for regulating interstate commerce, and the defendants, having failed to do so in this instance, they are estopped from setting up such facts to prevent the enforcement of the order of the commission.

Fourth. Because the court has no jurisdiction to try any case other than the case made before the commission. It has no power to try a new and distinct case which was never submitted to the discretionary power of the commission.

Fifth. Because the question of whether a carrier in carrying the traffic under such circumstances and conditions as exempt it from the operations of the fourth section is a subject-matter of which the commission has original and exclusive jurisdiction, and of which the Federal court has no jurisdiction until the commission has exercised

the jurisdiction, and the jurisdiction of the Federal court cannot in any event extend beyond the limit exercised by the commission in finding the order sought to be enforced. Any other construction would practically give the Federal court, a purely judicial body, the power to regulate interstate commerce, which is purely a legislative function.

Sixth. Because this evidence raises new and distinct reasons why the carriers claim to be exempt from the operations of the fourth section, and should be submitted to the commission and passed upon by them before it can be made the subject-matter of consideration by the court.

Seventh. Because the evidence which raises new and different issues should be first submitted to the commission by the carriers, and the remedies provided for in the proviso of the fourth section of the act exhausted by the carriers before the judgment of the court can be invoked thereon and before the same be offered as a bar to the enforcement of the order of the commission.

All of which matters are apparent on the face of the record
72 of the case, and upon each and every ground here submitted petitioner prays the judgment of the court.

ROB'T L. BERNER,
Special Counsel for the Interstate Commerce Commission.

Filed in clerk's office 16th day of January, 1893.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC Railway Company, The Western and Atlantic Railroad Company, The Georgia Railroad Company. } In Equity.

Opinion.

Filed in clerk's office, July 3, 1893.

O. C. FULLER, *Clerk.*

This is an application by the Interstate Commerce Commission to this court to enforce an order passed by the commission in the case of The James & Mayer Buggy Company *vs.* The Cincinnati, New Orleans & Texas Pacific Railway Company, The Western and Atlantic Railroad Company and The Georgia Railroad Company.

The petition of the James & Mayer Buggy Company to the Interstate Commerce Commission was as follows:

The petition of the above-named complainant respectfully shows:

First. That the James & Mayer Buggy Company manufacture buggies, carriages, etc., in the city of Cincinnati, State of Ohio.

Second. That the defendants above named are common carriers, and under a common control, management or arrangement for continuous carriage or shipment are engaged in the transportation of passengers and property, wholly by railroad, between Cincinnati, in the State of Ohio, and Chattanooga, in the State of Tennessee, and between Chattanooga, in the State of Tennessee, and Atlanta, in the State of Georgia, and between Atlanta, in the State of Georgia, and Augusta, in the State of Georgia, and as such common carriers are subject to the act to regulate commerce.

Third. That the first-class rate of freight, as published in the tariff of the Cincinnati, New Orleans and Texas Pacific Railway Company, from Cincinnati, Ohio, to Atlanta, Ga., the distance being about 447 miles (more or less), is $1.01 per 100 pounds.

Fourth. That the first-class rate of freight from Cincinnati,
73 Ohio, to Augusta, Ga., over the same lines of railroad, the distance being about 648 miles (more or less), is also $1.01 per 100 pounds.

Fifth. That the first-class rate of freight from Cincinnati, Ohio, to Social Circle, Ga., over the same lines, the distance being about 525 miles (more or less), is $1.31 per 100 pounds.

Sixth. That the complainant above named, shipping vehicles to Atlanta, Ga., ought not to be compelled to pay the same rate of freight as when shipping to Augusta, Ga., a point 171 miles farther distant on the same lines.

Seventh. That the complainant above named in shipping vehicles to Social Circle, Ga., ought not to be compelled to pay a rate of freight which is 30 cents per 100 pounds higher than shipping to Augusta, Ga., a point 120 miles (more or less) farther distant along the same lines.

Eighth. That the above-named defendants are violating section 4 of the act to regulate commerce in charging a greater sum for a shorter distance than for a longer distance in the same direction over the same lines.

The above petition prayed that an order be made commanding the defendant to cease and desist from the violation complained of, and was signed and sworn to by a representative of the James & Mayer Buggy Company.

The answer of the Western and Atlantic Railroad Company was as follows:

The Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: I have before me your favor of October 22, inclosing copy of petition filed against our company, embracing a statement of charges made by the James & Mayer Buggy Company.

In reply I will state that there is nothing in the interstate commerce law, so far as we read it, which requires that we should make from Cincinnati to Atlanta a less rate than from Cincinnati to Augusta. Therefore, we do not consider that that portion of the complaint filed by the petitioners has any force.

Regarding the rate of freight from Cincinnati to Social Circle, Ga., I will state that Social Circle is a local point on the Georgia

railroad, and that company has not furnished us with any basis for working business to its local points other than taking the rate as in this instance from Cincinnati to Atlanta and adding their local. This company on this business has charged no more than if the freight had stopped at Atlanta, or than it would receive going to any point within the same radius from Atlanta as that in which Social Circle is located.

Further, as the rates to Augusta are brought down by water competition, we do not consider that we have violated the interstate commerce law. The rate within itself is not unreasonable, and we cannot see that there is any discrimination against the parties at Social Circle, and this company, furthermore, is unable to control the local rates of any of its connections.

The answer of the Georgia Railroad Company was as follows:

This respondent answering says:

1. It is informed and believes that the James & Mayer Buggy Company manufacture buggies, carriages, etc., in the city of Cincinnati, State of Ohio.

2. This defendant and the defendants above named are common carriers and under a common arrangement for continuous carriage or shipment, are engaged in the transportation of passengers and property wholly by rail, between Cincinnati, in the State of Ohio, and Chattanooga, in the State of Tennessee, and between Chattanooga, in the State of Tennessee, and Atlanta, in the State of Georgia, and Augusta, in the State of Georgia.

3. The rate of freight on buggies, carriages, etc., from Cincinnati, Ohio, to Atlanta, Ga., the distance being about 473 miles,
74 was, at the date named, $1.01 per 100 pounds in less than car-load lots, knocked down, boxed or crated, and released. This was an unauthorized rate. The proper rate, Cincinnati to Atlanta, should have been $1.07 per 100 pounds.

4. The rate of freight on buggies, carriages, etc., from Cincinnati, Ohio, to Augusta, Ga., over the same lines of railroad and the railroad of this respondent, the entire distance being about 645 miles, is also $1.07 per 100 pounds.

5. This respondent says that it has no arrangement with the roads between Atlanta, the western terminus of respondent's railroad, and Cincinnati for through rates from Cincinnati to any station on the Georgia railroad other than Milledgeville—where respondent competes with the Central Railroad of Georgia—and the terminal stations of Augusta, Athens, and Washington; that if a through bill of lading is issued at Cincinnati for freight from that point to Social Circle, a station on respondent's railroad, the rate is made as follows, to wit, by adding to the rate from Cincinnati to Atlanta, respondent's local rate from Atlanta to Social Circle; thus, the rate from Cincinnati to Atlanta, as given above, is $1.07 per 100 pounds, to which is added respondent's local rate from Atlanta to Social Circle, to wit, thirty cents per 100 pounds, making a through rate from Cincinnati to Social Circle of $1.37 per 100 pounds. Respondent does not quote any through rate from Cincinnati to any sta-

tions on its railroad except Milledgeville and the terminal stations above named; but of course its local tariff, as fixed by the Georgia railroad commission, is known to the initial road at Cincinnati.

6. Respondent says that the rate from Atlanta to Social Circle is just and reasonable; also, that the rate from Cincinnati to Social Circle is just and reasonable, and not obnoxious to any provision of the interstate commerce act by reason of not being just and reasonable.

7. Respondent further says that the through rate from Cincinnati to Augusta, though the same as from Cincinnati to Atlanta, is not unlawful under section 4 of the interstate commerce act, because said rates are charged not under substantially similar circumstances and conditions.

In explanation of this statement respondent says that at Baltimore, Md., and other eastern cities large manufactories of buggies, carriages, etc., exist, and that the product of these factories is transported from said places to Augusta at such rates that if this respondent and its connections between Atlanta and Cincinnati charge a higher rate than $1.07 per 100 pounds from Cincinnati to Augusta no freight of this character would come over the Georgia railroad, for the product of the eastern factories would be delivered in Augusta at a rate which would exclude the Cincinnati product from the Augusta market.

8. This respondent says that while no arrangement exists, as above stated, for a through bill of lading from Cincinnati to Social Circle, as a matter of fact the shipment from Cincinnati to Social Circle by the petitioner was made on a through bill of lading, the rate of which was fixed, as hereinbefore stated, by adding this respondent's local rate from Atlanta to Social Circle to the through rate from Cincinnati to Atlanta.

The answer of the Cincinnati, New Orleans and Texas Pacific Railroad Company in the case before the commission was as follows:

The Cincinnati, New Orleans and Texas Pacific Railway Company for answer to the petition of complainant herein, says:

1. It admits that the James & Mayer Buggy Company manufactures buggies, carriages, etc., in the city of Cincinnati, State of Ohio.

2. That the above-named defendants are common carriers engaged in the transportation of passengers and property wholly by railroad between Cincinnati, Ohio, and Atlanta, Ga., and Cincinnati, Ohio, and Augusta, Ga.; but it says that said defendants are not under a common control, management or arrangement for continuous carriage or shipment, but that, on the contrary, the connection
75 of this defendant with such carriage or shipment begins at Cincinnati, Ohio, and ends at Chattanooga, Tenn.; that of the Western and Atlantic Railroad Company begins at Chattanooga, Tenn., and ends at Atlanta, Ga., and that of the Georgia railroad begins at Atlanta and ends at Augusta, in the State of Georgia.

3. It admits that the first-class rate of freight published in the

tariff of this defendant, from Cincinnati, Ohio, to Atlanta, Ga., a distance of about 477 miles, is $1.01 per 100 pounds.

4. It admits that the first-class rate of freight from Cincinnati, Ohio, to Augusta, Ga., a distance of about 648 miles, is also $1.01 per 100 pounds.

5. It admits that the first-class rate of freight from Cincinnati, Ohio, to Social Circle, Ga., over the same line, the distance being about 525 miles (more or less), is $1.31 per 100 pounds.

It says that the power of this defendant over said rates of freight and the division thereof only extends to securing a reasonable compensation for the services performed in transporting merchandise from Cincinnati, Ohio, the northern, to Chattanooga, Tenn., the southern terminus of its line; that its proportion of the rate of $1.01 to Atlanta, Ga., is $71\frac{6}{10}$ cents, and that of the Western and Atlantic Railroad Company is $29\frac{4}{10}$ cents per 100 pounds; that its proportion of the rate to Augusta, Ga., from Cincinnati, Ohio, is $52\frac{6}{10}$ cents; that of the Western and Atlantic $21\frac{6}{10}$ cents, and that of the Georgia railroad is $26\frac{8}{10}$ cents; that said rate to Atlanta is reasonable and just and a reasonable compensation for the services performed; that the rate to Augusta is the same as to Atlanta, for the reason that such rate is governed by the rate from Baltimore and New York to Augusta and made on a lower basis than the rates to Atlanta on account of water competition via Charleston, S. C., and Savannah, Ga., which operates to lower such rate to Augusta. The relative distance hauled and the proportionate amount of services performed by this defendant in carrying said goods to Augusta, being less than the distance and service to Atlanta, the compensation of this defendant is relatively less.

As to the rate to Social Circle, Ga., defendant says that such rate can only be made by this defendant by consent and permission of The Georgia Railroad Company, codefendant herein; that the transportation to said Social Circle can only be effected by the coöperation of the said Georgia railroad, said Social Circle being a station on its line, and the said Georgia railroad stipulating and insisting that the said rate shall be 30 cents greater than the rate to Augusta and Atlanta. This defendant receives no part of or allowance on account of the 30 cents additional charged to Social Circle, the same being purely a local rate charged by the Georgia railroad for transportation over its line from Atlanta to Social Circle.

There seems to have been very little evidence in the case before the commission, as it appears from the report of the case only one witness was introduced, who was an officer of one of defendant companies. The facts were principally ascertained by the admission of the parties and from the records, and presumably from the tariffs of rates, etc., filed with and in the possession of the commission.

The serious question presented to the commission in this case was the right of the defendant railroad companies to charge more for shipments of first-class freight from Cincinnati to Social Circle than from Cincinnati to Augusta. The Cincinnati, New Orleans and Texas Pacific railroad runs from Cincinnati, in the State of Ohio, to Chattanooga, in the State of Tennessee, a distance of 336 miles;

the Western and Atlantic railroad runs from Chattanooga, in the State of Tennessee, to Atlanta, in the State of Georgia, a distance of 138 miles; the Georgia railroad runs from Atlanta to Au-
76 gusta, Ga., a distance of 171 miles. Social Circle is a town on the line of the Georgia railroad, 52 miles east of Atlanta and 119 miles west of Augusta, Ga., and consequently a shorter distance by the last-named number of miles from Cincinnati than is Augusta.

The contention was that the charge of $1.31 from Cincinnati to Social Circle per 100 pounds on first-class freight, when only $1.01 per 100 pounds on similar freight was charged from Cincinnati to Augusta, was in violation of the long and short haul clause in section 4 of the act to regulate commerce, approved February 4, 1887, and known as the interstate commerce act.

The order of the commission in the case is given in full and is as follows:

It is ordered and adjudged: That the defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, do, from and after the 20th day of July, 1891, wholly cease and desist from charging or receiving any greater compensation in the aggregate for the transportation in less than car-loads of buggies, carriages, and other articles classified by them as freight of first class, for the shorter distance over the line formed by their several railroads from Cincinnati, in the State of Ohio, to Social Circle, in the State of Georgia, than they charge or receive for the transportation of said articles in less than car-loads for the longer distance over the same line from Cincinnati aforesaid to Augusta, in the State of Georgia; and that said defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company and The Western and Atlantic Railroad Company, do also, from and after the 20th day of July, 1891, wholly cease and desist from charging or receiving any greater aggregate compensation for the transportation of buggies, carriages, and said other first-class articles in less than car-loads from Cincinnati, aforesaid, to Atlanta, in the State of Georgia, than one dollar ($1) per 100 pounds.

In the case before this court each and all of the defendants filed answers which, in addition to the matters set up in their answers in the case before the commission, are substantially as follows:

The defendant- Georgia Railroad Company admit that the proceedings before the Interstate Commerce Commission were as stated in the petition here, but they deny that it was made to appear that the provisions of the act to regulate commerce had been violated by them in the respects charged in the petition before the commission, or that the matters in controversy had been legally determined by the commission, and denies the legal or binding effect of the order passed by the commission.

The answer of the Cincinnati, New Orleans and Texas Pacific railroad is substantially the same as that of the Georgia Railroad Company.

The answer of the Western and Atlantic railroad contains the following:

That on the 27th of December, 1890, it became a body corporate, under the name and style of the Western and Atlantic Railroad Company, under an act of the legislature of Georgia, approved November 12, 1889, which provided for the lease of certain property of the State of Georgia known as the Western and Atlantic railroad, and that prior to said 27th day of December, 1890, this re-
77 spondent was not in existence, and therefore had no notice of the proceedings before the Interstate Commerce Commission in the matter of the petition of the James & Mayer Buggy Company, and had no connection with the matters therein complained of.

(Subsequently, by agreement, the present Western and Atlantic Railroad Company was made party defendant in lieu of the old company.)

1. So that the matters for determination here, as will be perceived, are (1) whether or not the charge of a greater rate for transporting first-class freight in less than car-load lots, per 100 pounds, from Cincinnati, Ohio, to Social Circle, Ga., than is charged for transporting the same class of freight to Augusta, Ga., a point 171 miles beyond, over the same line and in the same direction, is a violation of the fourth section of the interstate commerce act.

2. Whether or not the charge of $1.07 on first-class freight per 100 pounds in less than car-load lots from Cincinnati to Atlanta, Ga., is unreasonably high, and a violation, for that reason, of the act to regulate commerce.

The commission, in the beginning, denies the power of this court to hear the case upon any other issues, pleadings, or facts than those presented to the commission. It is claimed that the case is to be determined with reference to what the Interstate Commerce Commission had before it, and that no additional issues or questions should be raised or other evidence be taken. The language of the act of Congress does not support this contention. Section 16, which provides for the enforcement of the orders of the commission by and through the courts, is in these words: "And said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearings the findings of facts in the report of said commission shall be *prima facie* evidence of the matters therein stated."

It is impossible to believe that under this language of the act the powers of the court in the premises are restricted as contended for by the commission. The provision, "if it think fit to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful," etc., must neces-

sarily authorize the court to provide for the taking and hearing of such additional evidence as may be proper. And the power is equally clear to permit such pleadings as will bring before the court, clearly and in legal form, such matters as may be pertinent and proper in view of the issues raised.

78 In the case of The K. & I. Bridge Company *vs.* Louisville and Nashville Railroad Company (37 Fed. Rep., 567), Judge Jackson discussing this question on page 614 uses this language:

The suit in this court is, under the provisions of the act, an original and independent proceeding, in which the commission's report is made *prima facie* evidence of the matters of facts therein stated. It is clear that this court is not confined to a mere re-examination of the case as heard and reported by the commission, but hears and determines the cause *de novo*, upon proper pleadings and proofs, the latter including not only the *prima facie* facts reported by the commission, but all such other and further testimony as either party may introduce bearing upon the matters in controversy.

(See also I. I. C. *vs.* Lehigh Valley R. R. Co., 49 Fed. Rep. 177, and I. I. C. *vs.* Santa Fé Railroad Co., 50 Fed. Rep. 295.) In the latter case the court holds:

On the proceedings in the circuit court under section 16 to enforce an order of the commission directing certain carriers to desist from charging greater rates for the shorter than the longer haul, the facts found by the commission are not conclusive but merely *prima facie*, etc.

This question may be considered, therefore, as settled not by the language of the act of Congress, but by authority against the position assumed by counsel for the commission.

II. The next question raised here is as to whether the carriage of freight in the case now before the court by the Georgia railroad was such a carriage as to bring the shipment from Cincinnati to Social Circle within that part of the first section of the act to regulate commerce, which is as follows:

That the provisions of this act act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement, for a continuous carriage or shipment.

The position assumed is that there is no such arrangement for the "continuous carriage or shipment" between the Georgia Railroad Company, the Western and Atlantic Railroad Company, and the Cincinnati, New Orleans and Texas Pacific Railway Company as to bring the Georgia Railroad Company within the terms of the act. The facts appear to be that goods were shipped from Cincinnati to Social Circle on through bills of lading issued by the Cincinnati, New Orleans and Texas Pacific Railway Company, and were carried over the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia Railroad Company to Social Circle. The rate charged on first-class goods, such as were involved in this contro-

The answer of the Western and Atlantic railroad contains the following:

That on the 27th of December, 1890, it became a body corporate, under the name and style of the Western and Atlantic Railroad Company, under an act of the legislature of Georgia, approved November 12, 1889, which provided for the lease of certain property of the State of Georgia known as the Western and Atlantic railroad, and that prior to said 27th day of December, 1890, this re-
77 spondent was not in existence, and therefore had no notice of the proceedings before the Interstate Commerce Commission in the matter of the petition of the James & Mayer Buggy Company, and had no connection with the matters therein complained of.

(Subsequently, by agreement, the present Western and Atlantic Railroad Company was made party defendant in lieu of the old company.)

1. So that the matters for determination here, as will be perceived, are (1) whether or not the charge of a greater rate for transporting first-class freight in less than car-load lots, per 100 pounds, from Cincinnati, Ohio, to Social Circle, Ga., than is charged for transporting the same class of freight to Augusta, Ga., a point 171 miles beyond, over the same line and in the same direction, is a violation of the fourth section of the interstate commerce act.

2. Whether or not the charge of $1.07 on first-class freight per 100 pounds in less than car-load lots from Cincinnati to Atlanta, Ga., is unreasonably high, and a violation, for that reason, of the act to regulate commerce.

The commission, in the beginning, denies the power of this court to hear the case upon any other issues, pleadings, or facts than those presented to the commission. It is claimed that the case is to be determined with reference to what the Interstate Commerce Commission had before it, and that no additional issues or questions should be raised or other evidence be taken. The language of the act of Congress does not support this contention. Section 16, which provides for the enforcement of the orders of the commission by and through the courts, is in these words: "And said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearings the findings of facts in the report of said commission shall be *prima facie* evidence of the matters therein stated."

It is impossible to believe that under this language of the act the powers of the court in the premises are restricted as contended for by the commission. The provision, "if it think fit to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful," etc., must neces-

sarily authorize the court to provide for the taking and hearing of such additional evidence as may be proper. And the power is equally clear to permit such pleadings as will bring before the court, clearly and in legal form, such matters as may be pertinent and proper in view of the issues raised.

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78 and Nashville Railroad Company (37 Fed. Rep., 567), Judge Jackson discussing this question on page 614 uses this language:

The suit in this court is, under the provisions of the act, an original and independent proceeding, in which the commission's report is made *prima facie* evidence of the matters of facts therein stated. It is clear that this court is not confined to a mere re-examination of the case as heard and reported by the commission, but hears and determines the cause *de novo*, upon proper pleadings and proofs, the latter including not only the *prima facie* facts reported by the commission, but all such other and further testimony as either party may introduce bearing upon the matters in controversy.

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This question may be considered, therefore, as settled not by the language of the act of Congress, but by authority against the position assumed by counsel for the commission.

II. The next question raised here is as to whether the carriage of freight in the case now before the court by the Georgia railroad was such a carriage as to bring the shipment from Cincinnati to Social Circle within that part of the first section of the act to regulate commerce, which is as follows:

That the provisions of this act act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement, for a continuous carriage or shipment.

The position assumed is that there is no such arrangement for the "continuous carriage or shipment" between the Georgia Railroad Company, the Western and Atlantic Railroad Company, and the Cincinnati, New Orleans and Texas Pacific Railway Company as to bring the Georgia Railroad Company within the terms of the act. The facts appear to be that goods were shipped from Cincinnati to Social Circle on through bills of lading issued by the Cincinnati, New Orleans and Texas Pacific Railway Company, and were carried over the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia Railroad Company to Social Circle. The rate charged on first-class goods, such as were involved in this contro-

versy, is $1.07, being the through rate from Cincinnati to Atlanta, with the local rate of 30 cents per 100 from Atlanta to Social Circle over the Georgia railroad added thereto, making $1.37. The rate charged from Atlanta to Social Circle is the rate authorized by the railroad commission of Georgia, and is the regular rate for local freight between those two points. When the freight is collected, the Georgia railroad retains its entire local rate and the re-
79 mainder of the $1.07 is divided between the other two roads in proper proportion, according to an agreement between them.

The decision and order of the commission in this case was made on the 29th day of June, 1891. On the 3d day of July the following circular was issued by the Georgia railroad:

(Circular No. 106, new series.)

AUGUSTA, GA., *July* 3, 1891.

To connections.

DEAR SIR: Lately we have had some complications arising from connecting lines and their connections issuing through bills of lading quoting rates to our local stations, and to avoid such complications in the future we earnestly request that hereafter, in issuing bills of landing to our local stations, no rates be inserted east of Atlanta; this of course does not apply to business to Athens, Gainesville, Washington, Milledgeville, Augusta, or points beyond. Please issue instructions to your agents that this rule will be effective at once, and advise me if you will comply with my request.

Yours truly, E. R. DORSEY,
General Freight Agent.

In addition to this it is entirely clear from other evidence that the Georgia railroad insists on its local rate from Atlanta to points on its line between Atlanta and Augusta on all freight shipped from Cincinnati. According to all the evidence there is no agreement on the part of the Georgia railroad for any such joint tariff as implies a reduced rate from points in the West to points on its line, except to Augusta. The contention for this company therefore is, and in effect in behalf of all the defendants, that there is no such arrangement for a continuous shipment as brings the freight charge in this case to Social Circle, within the language of the first section of the act to regulate commerce, above quoted, and which controls the character of transportation to which the act applies.

In this connection the case of Chicago and Northwestern Railway Company *v.* Osburn (52 Fed. Rep., 912) is interesting and applicable. The decision in that case is by the circuit court of appeals for the eighth circuit, Justice Brewer delivering the opinion of the court. The action in the court below was to recover damages for violation of the "long and short haul" clause of the interstate commerce act. The facts as stated by Justice Brewer in that case are as follows:

The defendant owns and operates a railroad from Missouri Valley, a town on the western border of Iowa, to Chicago, Ill. Scranton is a town in Iowa on the line of this road, 88 miles east of Mis-

souri Valley, and therefore so much nearer Chicago. The Fremont, Elkhorn and Missouri Valley Railroad Company owns a railroad running east and west through Nebraska and connecting with the defendant's road at the town of Missouri Valley. Blair, Nebr., is a point on that road 13 miles west of Missouri Valley. While the Fremont, Elkhorn and Missouri Valley Railroad Company is an independent corporation, a majority of its stock belongs to the defendant company, and thus the defendant company controls its operations.

During the month of January, 1888, there was in force a local tariff of rates charged on the defendant's road. This local tariff was duly published in Scranton. In accordance with it the
80 rate from Scranton to Chicago on corn was 18 cents per 100 pounds. All shippers shipping simply to Chicago paid that rate. The plaintiff, among others, made sundry shipments and was charged and paid such sum. There was, so far as appears, absolute uniformity of rate as to all such local shipments. At the same time the tariff on corn shipped through from Blair, Nebr., to New York city was 38½ cents; to Boston, Philadelphia, and Baltimore sums slightly above and below this figure. This through rate was made up in this way: By agreement between the defendant and eastern companies corn was shipped through to New York from Turner and Rochelle, two small stations on the defendant's road, one 30 and the other 70 miles west of Chicago, for 27½ cents, 3½ cents of which went to defendant and the balance to the eastern companies; and by agreement between the defendant and the Fremont, Elkhorn and Missouri Valley Railroad Company the rate from Blair to Turner and Rochelle, on corn shipped to New York, Boston, Philadelphia, or Baltimore was 11 cents. In other words, by these agreements of the several companies a through rate was fixed on corn shipped from Blair to New York and other eastern cities; and of that through rate the defendant company received, for carrying the whole line of its road, less than the local tariff of 18 cents, charged from Scranton to Chicago. This joint tariff was not published at Scranton, and no knowledge of it was given to or possessed by the plaintiff until February 24, and until that time he made no application for shipment beyond Chicago. Thereafter he shipped to Boston and received the benefit of a through tariff.

According to the decisions in this case, upon the statement of facts just quoted, it is entirely clear that by the joint arrangement of the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia railroad that a new and independent "line" was formed by the adoption of a joint through tariff from Cincinnati to Augusta, and that this line was distinct and separate, viewed in the light of the "long and short haul clause," from that of either of the railroads named. The court in this case distinguished clearly and satisfactorily between the term "railroad," as used in the other parts of the act, and the term "line," as used in the fourth section. The language of the court on this subject, on pages 915, 916, is as follows:

The denunciation of the fourth section is against each separate

common carrier for its violation of the "long and short haul" clause on its own line. The language is: "That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation, in the aggregate, for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction; the shorter being included within the longer distance."

The use of the word "line" is significant. Two carriers may use the same road, but each has its separate line. The defendant may lease trackage right to any other railroad company, but the joint use of the same track does not create the "same line," so as to compel either company to graduate its tariff by that of the other.

Further, by section 6 every common carrier is required to print and publish at every depot along its own road schedules showing its rates and fares and charges. There is a prohibition against advancing rates without giving notice, and in case of a reduction notice thereof must be immediately posted; whereas, in reference to joint tariffs, the requisition is simply that each common carrier furnish to the commission a copy of all contracts therefor, as well as copies of the joint tariffs; and power is given to the commission to determine the amount of publication that shall be required.

81 Again, at the time of the passage of this act joint through tariffs were well known, as well as the fact that they were generally less than the sum of the local tariffs and not distributed between the several companies making them according to the mere matter of mileage. In this act joint tariffs are recognized, and if Congress had intended to make the local tariffs subordinate to or measured by the joint tariff its language would have been clear and specific.

It is worthy of note that in the debates which attended the passage of this bill through the two houses, and while this matter was under discussion, it was again and again said by those participating in the debates that the line formed under the joint tariff of connecting companies was one separate and independent from that of either of the connecting companies, and also worthy of note that in the actual administration of affairs by the Interstate Commerce Commission the same thing has been constantly recognized.

The question then is does the fact that goods are shipped through from Cincinnati to Social Circle, that a through rate of freight is given by the initial carrier, that the goods are continuously transported over the three roads until they arrive at Social Circle, make it transportation subject to the interstate commerce act, notwithstanding the fact that the Georgia railroad insists upon and receives its local rate, and has no arrangement for a joint tariff, from Cincinnati to Social Circle, except that it allows the initial road (Cincinnati, New Orleans and Texas Pacific Railway Company) to make the rate as has been indicated, and in which it acquiesces by receiving the goods and delivering them at Social Circle? In the Osburn case, above quoted, it is said:

Neither company is bound to adjust its own local tariff to suit

the other, nor compelled to make a joint tariff with it. It may insist upon charging its local rates for all transportation over the line.

Further on this language is used:

No power exists at common law and none is given by the act to court or commission, to compel connecting companies to contract with each other, to abandon full control of their separate roads, or to unite in a joint tariff.

This correctly states the act of Congress, and no railroad is compelled to enter into a through-rate arrangement for transportation, unless it desires to do so. The fact runs through all the evidence in this case appearing sometimes in the direct and sometimes brought out by cross examination, that the rate from Cincinnati to Social Circle is a combination of a through rate from Cincinnati to Atlanta and the local rate of the Georgia railroad from Atlanta to Social Circle. There is no difference as to shipments over the Georgia railroad to local stations, whether the goods come from Cincinnati or whether the shipments originate in Atlanta; the rate is precisely the same, and as to the Georgia railroad, so far as appears, the carriage is the same. A joint tariff for through traffic, such as will make a "new" or "independent line," under a decision in the Osburn case, *supra*, would seem to be charges made on a different basis, and usually, perhaps invariably, at a less rate than that of the sum of the local rates of the lines entering into the joint arrangement. If this be true, then, the rate from Cincinnati
82 to Social Circle would not be such a joint rate or joint tariff as makes a "new line," as indicated in the decisions named. There must be a "common arrangement" between the roads making the "new line," and there is no such "common arrangement" by the Georgia railroad as to traffic to its local stations; there is express refusal to make any "common arrangement," if evidence is to have any weight. The evidence shows no express agreement, and none can be fairly implied from the facts. Justice Brewer, in the Osburn case, makes this qualification:

That we may not be misunderstood, we do not mean to intimate that the two companies, with a joint line, can make a tariff from Turner to Cleveland higher than from Turner to Buffalo, or to any intermediate station between Cleveland and Buffalo, for when the two companies, by their joint tariff, make a new and independent line that new and independent line may become subject to the long and short haul clause. But what we mean to decide is that a through tariff on a joint line is not the standard by which the separate tariff of either company is to be measured or condemned.

It is contended in the argument here, that the effect of this restrictive language as applied to this case is that when the three railroads form a line from Cincinnati to Augusta, by entering into a joint tariff for the transportation of goods between those points, that no more could be charged for a haul from Cincinnati to any point between Atlanta and Augusta than could be charged to Augusta; and that no more could be charged from Cincinnati to any point between Chattanooga and Atlanta than would be charged

common carrier for its violation of the "long and short haul" clause on its own line. The language is: "That it shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation, in the aggregate, for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction; the shorter being included within the longer distance."

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by the through rate from Cincinnati to Atlanta. But applying the Osburn case here the Lake Shore railroad runs from Chicago to Buffalo, and Cleveland, although a large city, is an intermediate station on that road. The joint rate in the Osburn case was made to Cleveland, the intermediate station; and that decision holds that where a railroad made a reduced joint rate to an intermediate station on its line of road, it could not charge more to any point beyond. The Lake Shore road had become part of a "new and independent line," although the "new and independent line," so far as the Osburn case is concerned, was to Cleveland. The facts in that case are, therefore, entirely different from the facts in this case, and the qualifying language of Justice Brewer does not seem to have any application here. The decision in the Osburn case has been quoted and applied, however, in one of the circuit courts since it was rendered.

The case of The United States *vs.* Mellen and others (53 Fed. Rep. 229), decided by Judge Riner, in the district court for Kansas, November 28, 1892, was an indictment against Mellen and others for a violation of the long and short haul clause of the interstate commerce act, and the decision of the court there, so far as applicable here, may be gathered from the first two head-notes, which are as follows:

1. The long and short haul of the interstate commerce act (section 4) does not apply to a case where the short-haul rate is the combined local rates of two connecting lines, and the long-haul rate as a joint rate made by the two lines, acting together; and an indictment alleging such rates is bad. (Railway Co. *v.* Osburn, 52 Fed. Rep. 912, followed.)

2. An indictment alleging that the share of the joint rate taken by one company is less than its local rate for a shorter haul, etc., is bad. (Railway Co. *v.* Osburn, 52 Fed. Rep. 912.)

83 In that case the indictment alleged substantially, taking all the counts together, that the defendants were agents of the Union Pacific Railway Company, and officers who had authority to establish rates of freight on the lines of said company, and that on the 20th April, 1891, the Union Pacific Railway Company had entered into an arrangement with the Southern Pacific Railroad Company, also a common carrier, both being subject to the act to regulate commerce, and established a rate or joint tariff for the transportation of refined sugar by the two lines of railroad named, from San Francisco, Cal., to Kansas City, Mo.; that the rate under this joint tariff is 65 cents per 100 pounds from San Francisco to Kansas City, and that of this the Union Pacific received 32.4 cents, and the Southern Pacific Company 32.6 cents. It is further charged that the city of Salina is a station on the main line of the Union Pacific Railway Company in Kansas, and is located 186 miles west of Kansas City, Mo., and a shorter distance from San Francisco by 186 miles. The indictment then charges the defendant with willfully establishing a rate of 94 cents for each 100 pounds of refined sugar, in car-load lots, transported or carried over the Union Pacific and the Southern Pacific from San Francisco, Cal., to Salina, Kans.,

notwithstanding the rate of 65 cents per 100 pounds to Kansas City, Mo. Then the charge is made that these shipments were "made under similar circumstances and conditions" to each place. The court sustained a motion to quash the indictment on all the counts in the indictment except one; and the count sustained alleged a shipment from Ogden, at a greater charge in the aggregate for the shipment from Ogden to Salina, than was charged from Ogden to Kansas City. Of that the court says:

In this count of the indictment there is no allegation of a joint rate to Kansas City, Mo., and a joint rate is not made the basis by which the reasonableness of the local rate is to be determined, hence does not come within the principle announced in the case of Railway Company *v.* Osburn.

Afterwards in the opinion the court, in speaking of the count which is sustained, says:

If, however, upon the trial of the cause, it should be made to appear by the evidence that the joint rate to Kansas City was made the basis of adjusting the local rates, charged in this count of the indictment, the defendant would be entitled to acquittal.

This case is exactly in point here except that there were only two roads involved there, while there are three here. The facts there were that the goods were received for shipment by the Southern Pacific, and were carried over its line from San Francisco to Ogden, and from Ogden over the Union Pacific to Kansas City. The rate from San Francisco over the entire distance to Kansas City was 65 cents, while the rate from San Francisco to Salina, a station intermediate between Kansas City and Ogden, was 94 cents. It will be seen, therefore, that for the purpose of applying the principle
84 ruled in the Osburn case, the case of Mellen and others, and the case here are exactly alike. Judge Riner in the Mellen case says in the opinion:

The allegation is that they charged the local rate from Ogden to Salina, which was *less* than their part of the joint rate to Kansas City, although Salina was a shorter distance. This, I think, they may do, for the reason already suggested. The joint rate does not in any sense affect or govern the local rates to intermediate points. While, as stated by Mr. Justice Brewer, the two companies could not make a joint rate from San Francisco to Kansas City which was less than a joint rate from San Francisco to Salina, yet they may make a joint rate to Kansas City, Mo., and that fact would not affect the local rate of either company to Salina.

(The word "less" italicised in the quotation should evidently have been "more" as the report of the case shows that the rate from Ogden to Salina was 61 cents, which was more than *than* the Union Pacific's part of the joint rate of 65 cents from San Francisco to Kansas City.)

The foregoing decisions, which seem to properly construe the interstate commerce law, are conclusive of the matter now being considered, viz: whether the rate from Cincinnati to Social Circle, as shown in this case, can be compared with the rate from Cincinnati to Augusta, for the purpose of making the question presented

under the "long and short haul clause" of the act to regulate commerce.

The conclusions of the court, therefore, are—

1. That the traffic from Cincinnati to Social Circle, in issue here as to the Georgia Railroad Company, is local, and that company is not, on the facts presented, made a party to a joint or common arrangement such as makes the traffic to Social Circle subject to the control of the Interstate Commerce Commission.

2. That the arrangement for a through rate—for there is, unquestionably, a joint tariff from Cincinnati to Augusta—constitutes a "new line" between Cincinnati and Augusta; and following Osburn *v.* Chicago and Northwestern Railroad Company, *supra*, and United States *v.* Mellen and others, *supra*, traffic to a local point on the Georgia railroad, at strictly local rates, cannot be compared with traffic over the "new line" from Cincinnati to Augusta, for the purpose of raising the question under the long and short haul clause of the interstate commerce act.

If this be not true, then a railroad must refuse to receive freight which comes over other lines of railroad and destined to local points on its road for which the initial carrier has issued a through bill of lading, or, by receiving it, it must become a party to a joint arrangement. This result could not have been in contemplation by Congress in passing this act, and no fair interpretation of its terms or view of its intent can lead to such a conclusion.

3. If the foregoing views are correct, it is unnecessrry to go at any great length into the question so elaborately and so ably argued in this case as to the meaning of the words "under substantially similar circumstances and conditions," contained in the fourth section of the act to regulate commerce and its applications to the facts of this case, namely, the charge of $1.37 to Social Circle and
85 the less charge of $1.07 to Augusta, the more distant point.

Since the passage of this act, and, indeed, before the bill which resulted in the act became a law, there has been much discussion as to the meaning of this phrase. Widely different views have been entertained since the passage of the act certainly as to its meaning.

Taking the prohibitory part of the section in connection with the proviso, it has been insisted on the one hand that the phrase "under substantially similar circumstances and conditions" referred to such conditions and circumstances as were connected immediately with the transportation of the goods; connected with their carriage over any lines of roads, and that if extrinsic circumstances or conditions would justify the greater charge for the shorter than for the longer haul, in any case, that the right to make it could only be obtained by first applying to the commission for its approval.

The other view has been that this phrase included other circumstances and conditions than those connected with the carriage of the goods, and that, embraced in such circumstances and conditions, was competition.

A further contention is, that the court should give effect to this entire section, and that not only the main or prohibitory part of

the section should be considered, but also the proviso, and that the court must attribute to Congress an intent to give meaning to every part. The rule of construction claimed is undoubtedly correct. A part of the recognized history of this act, however, is that the proviso formed part of the bill before the words "like kind of property under substantially similar circumstances and conditions" were inserted therein. If the section had been left without these last-mentioned words, thereby establishing a hard and fast rule as to the long and short haul, the proviso would have clothed the commission with great power over the subject-matter of the section, but after the introduction of the phrase "under substantially similar circumstances and conditions" the authority of the commission was undoubtedly very greatly restricted, and much more was left to the judgment and determination of the carrier in the first instance. But even after the insertion of the qualifying clause named, it was doubtless considered that the retention of the proviso was necessary, as special cases would arise requiring relief from the operation of the rule, even where the circumstances and conditions were substantially similar.

Judge Cooley, speaking for the Interstate Commerce Commission *In re* Louisville and Nashville Railroad Company (1 I. C. C. Rep., 53), states the question and the general view the commission entertained as early as June, 1887, in this way:

The Louisville and Nashville Railroad Company was one of the first to apply for relief under the fourth section of the act to regulate commerce, which, after declaring the general rule that more shall not be charged or received in the aggregate by a common carrier subject to the law for the transportation of passengers or of the like kind of property, under substantially similar circum-
86 stances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer, proceeds then to authorize exceptions, and confers upon the commission certain powers in respect thereto.

From the first there have been two opinions regarding the proper construction of this provision for exceptions; one view being that no exception can be lawful unless made with the sanction of the commission; and the other, apparently better supported on the words of the statute, that an order of relief is not required when the circumstances and conditions are substantially dissimilar, since the carrier in acting upon them would commit no breach of law, though it would be responsible in case it were found that the circumstances and conditions were misconceived or misjudged. Under this last view, the order for relief would be needful only when the case was one of plainly dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge.

Afterwards in this opinion, the commission restricted the class of competition which would constitute dissimilar circumstances and conditions to competition with Canadian railroads, with water lines of transportation, and with some other qualifications (which were afterwards removed), to competition with railroads wholly within a

State. It was also held in that opinion, that competition with other lines of railroad subject to the act, would not, as a general thing, constitute such competition as would create dissimilar circumstances and conditions, but that there might be "rare and peculiar cases," which would do so. As to these four classes of competition, namely, competition with Canadian roads, with water lines, with roads wholly within the State, and with "rare and peculiar cases," all railroad lines subject to the commission might for itself, treat them as constituting dissimilar circumstances and conditions, and make the greater charge for the shorter haul without first obtaining the consent of the commission; as to other cases the consent of the commission was deemed necessary.

In the case of The Georgia Railroad Commission *vs.* Clyde Steamship Company, and others, the commission overruled so much of the decision in the Louisville and Nashville Railroad Company, as allowed the carriers to judge in the first instance of the "rare and peculiar cases" of competition with railroads subject to the act, and thereby justify itself in the charge of a greater rate for the shorter than for the longer haul.

The general construction of this clause, which admits competition as constituting dissimilar circumstances and conditions, is fully sustained by decisions of the circuit courts in cases which will be referred to, and which decisions are more comprehensive than the decisions of the commission. It appears to be settled, so far as decisions have been rendered and construction given this clause, that the broader of the two opposing views above referred to must be taken of the phrase "under substantially similar circumstances and conditions," and that competition, generally speaking, must be considered in applying this phrase in any given case.

87 The question which has been argued so extensively here, is whether competition of carrier with carrier, both subject to the terms of the act, and competition of market with market, is such competition as will constitute dissimilar circumstances and conditions. The substance of the expressed views of the commission on this subject is, that competition between two carriers, both subject to the act, will not of itself, constitute dissimilar circumstances and conditions, that it will not presumptively at least. The opinion of the commission seems to be that where a carrier claims that competition with another carrier, both being subject to the act, is such as to justify it in making a greater charge for the shorter than for the longer haul, that the commission can do much by the exercise of its general powers of supervision over rates, in relieving the complaining carrier of such competition. At all events, it is clearly held that competition between carriers subject to the act will not be presumed to justify a less charge for the longer haul than for the shorter haul by the carrier of its own motion, but that the right to do so must be granted by the commission.

The commission has decided that it has no authority to raise rates. It holds that it was not the intention of Congress to grant any such power, and the commission so determined in the matter of Chicago, St. Paul and Kansas City railway, second, Interstate

Commerce Commission Rep., 231. If the carrier subject to the act is met with competition from other carriers also subject to the act, and the commission has no authority to require such other carriers to increase their rates even when the competition is ruinous, where is the practical difference between such a case and the case of competition with carriers not subject to the act? If a line of railroad running along the northern boundary of our country is met with competition from Canadian railroads running parallel with it, the American railroad can treat such competition as a circumstance and condition justifying a lesser charge for the long haul to a competitive point than it makes for a shorter haul and to a non-competitive point, but a line of railroad running through the interior of our country, and interstate, which meets with competition with another line of railroad running parallel with it, and interstate also, may not treat such competition as a circumstance and condition justifying a less charge for the longer haul to a competitive point than for the short haul to a non-competitive point on its line, notwithstanding the fact that it can have no direct relief from such competition. In the first-named case, that is, competition with the Canadian road, the American road may, of its own motion, treat such competition as a dissimilar circumstance and condition, while the line of road running into the interior must await the action of the commission until it can ascertain whether, by examination and revision of rates of the line of which complaint is made, any relief can be afforded to the complaining line. Such condition of affairs could hardly have been contemplated by Congress in the passage of this act. If the general conclusion is correct, that competition will constitute dissimilar circumstances and conditions in the sense in which that term is used in the act, there seems to be no good reason for drawing the line where it has been drawn by the commission; but, on the contrary, it does seem that competition of carrier with carrier both subject to the act, is as much within the terms of section 4 as competition with the carrier not subject to the act.

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This section, and especially this clause, was before Judge Deady, in the United States circuit court for Oregon, 31 Fed. Rep., 315. The decision was on the petition of a receiver for instructions as to his duty under the act and under this clause in section 4. Judge Deady, in holding that competition must be considered, uses this language:

The judgment of the court is authority, then, for this proposition. Two or more corporations, in order to meet competition, may form a through line and charge through rates for transportation thereon, which may be less than the sum of the local rates of the several roads constituting the line; and the portion of the through rate received by each corporation may be less than the local rate charged by said corporation for carrying freight over the whole length of its road.

The interstate commerce act is intended, among other things, to prevent discrimination between long and short hauls, except where they are made under substantially dissimilar circumstances and

conditions. In my judgment Congress, in limiting the prohibition contained in section 4 of the act against discriminating charges between long and short hauls to cases where such hauls are made "under substantially similar circumstances and conditions," has recognized the rule laid down in *ex parte* Koehler as a proper one. Freight carried to or from a competitive point is always carried under "substantially dissimilar circumstances and conditions" from that carried to or from non-competitive points. In the latter case the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than a short one. When each haul is made to or from a non-competitive point, the effect of such discrimination is to build up one place at the expense of the other. Such action is wilfully unjust, and has no justification or excuse in the exigencies or conditions of the business of the corporation. In the former case the circumstances are altogether different. The power of a corporation to make a rate is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or, as was said in *ex parte* Koehler, "abandon the field and let its road go to rust."

Competition may not be the only circumstance that makes the condition under which a long and short haul are performed substantially dissimilar, but certainly it is the most obvious and effective one, and must have been in contemplation of Congress in the passage of the act.

In the case of The Missouri Pacific Railway Company *vs.* The Texas Pacific Railway Company (31 Fed. Rep., 862), which was also on the application of a receiver for instructions, Judge Pardee ruled as follows:

Under section 4 of the interstate commerce law, relating to the charges for long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstances or conditions which produce the dissimilarity the doubt should go in favor of the object of the law and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar, and the result to the carrier is injurious, relief can be had only through the commission.

89 The bulk of the petition presented, of the evidence, and of the master's report, is an argument against the interstate commerce act, and a rather vivid showing of the disastrous effects of an enforcement of the act with the popular construction given to the long and short haul clause, so far as the lines of the Texas and Pacific railway are concerned, and if any specific question is presented for the answer of the court it is whether competition between carriers is a circumstance or condition of the carriage in the sense in which those words are used in the 4th section of said law.

The effect of the enforcement of the law upon the particular property in the hands of the receiver need not be considered, when the whole question is one of how to comply with the law. That

competition, the life of trade, cuts an important figure in the conditions and circumstances attendant upon transportation of passengers and property cannot be well overlooked or denied. Nor can it well be denied that, as between the short and long haul, competition may exist to that extent that what would otherwise be similar circumstances and conditions will be dissimilar circumstances and conditions. Whether in any particular case there is that competition on the long haul that will justify a lower charge for the long haul than is charged for the short haul, under otherwise similar circumstances and conditions, must be determined on the facts of the particular case, keeping in mind that, where the matter is not clear the object and policy of the law should prevail.

As to competition and its effects, and generally as to the question under the said interstate commerce act, the receivers are referred to the late decision of the commission upon the petition of the Louisville and Nashville and other railroads, delivered June 16, instant. This decision is elaborate and well considered and answers all the points made by receiver's petition herein as specifically as their general nature will permit.

The lights furnished by the commission, with a disposition to enforce the law, (giving the same an enlightened and liberal construction, to the end that the mischiefs at which the law is aimed may be prevented without unnecessary injury to any species of property), ought to be sufficient to guide any railroad traffic manager, and to enable him to protect himself and his company against any serious complaint of unjust discrimination or unlawful conduct.

In the case of Interstate Commerce Commission *vs.* Atchison, Topeka and Santa Fé Railway Company (50 Fed. Rep., 306), Judge Ross, in the opinion, uses this language:

The common carrier cannot be required to ignore or overcome existing differences in the transportation facilities of different localities, created, not by its own arbitrary action, but by nature or by enterprises beyond its control. San Bernardino is situated in one of the most fertile and productive valleys in the world, and is a thriving and prosperous city, but it has not the transportation facilities that Los Angeles has.

It is about 60 miles distant and farther inland. By reason of its nearness to Los Angeles, it receives the benefit of the competitive rates to that terminal in proportion to its proximity thereto; but, not being a competitive point, it does not get the terminal rates. The proof shows, what is also a matter of common knowledge, that railroad companies do not make terminal rates, unless compelled to do so by competition. Wherever and whenever actual competition exists, the question the carrier has to deal with is not so much what is a fair rate for the service or what the traffic will bear, but what rate can be got for the service as against the rate offered by the competitor. Especially is this true when the competitor is a carrier by water, because that is the cheapest known kind of transportation, and is unrestricted by law. If, therefore, Los Angeles can be justly regarded as a competitive point in respect to the transportation of

the commodities here in question, there is such dissimilarity of circumstances and conditions between it and the intermediate
90 point of San Bernardino as to make the long and short haul clause of the interstate commerce act inapplicable.

Judge Shiras took a different view of this clause in Osburn *v.* Chicago, etc., Railroad Company (8 Fed. Rep., 54), when it was tried before him. His view of its meaning will appear from this quotation from his charge to the jury.

Whether the railway company was justified by a cut rate in making what was called in argument, "illegitimate competition" and circumstances of that kind, which grew out of the handling and management of the railroad business of the country by other competing lines, and its effect upon the business of the defendant company, in the judgment of the court is a question that cannot be submitted to you. Questions of that kind are for the judgment and determination of the board of commissioners appointed under this act, and the courts and juries when they are called to act upon particular cases arising under this act, where it is claimed that the law has been violated, are only authorized to determine the question whether in the service rendered the character of the property, its conveyance and other facts which inhere in the carrying of the freight upon the particular line which is charged with the wrongdoing there existed dissimilar circumstances and conditions relieving the company from the charge of collecting larger rates for the shorter haul over the same line, in the same direction, and under otherwise substantially similar circumstances and conditions.

The case was reversed in the circuit court of appeals, Justice Brewer delivering the opinion, but the reversal was on the question of what constituted the "same line," and not because of any error in the charge of Judge Shiras on that ground. There is no discussion whatever of the phrase "under substantially similar circumstances and conditions" in the opinion by Justice Brewer for the appellate court. If the question was raised at all, it appears to have been passed without any decision.

It is contended on behalf of the commission that the case of *ex parte* Koehler and the San Bernardino case were decided solely with reference to water competition; but on examination of the facts of those cases and of the views of the court as expressed in the opinions it will be found that this contention is not justified. Both cases, as is true also of the case of The Missouri Pacific Railway Company *vs.* Texas Pacific Railway, appear to treat competition generally as embraced within the term "similar circumstances and conditions," and do not restrict this competition to competition with water lines.

4. The question of competition of market with market, as constituting dissimilar circumstances and conditions, has been considerably discussed in this case. In the opinion by Morrison, commissioner, in this case, James & Mayer Buggy Company *vs.* Cincinnati, New Orleans and Texas Pacific Railway Company *et al.* (4 I. C. C. Reps., 774), the commission alludes to competition of market with market in this way.

If the contention of the defendants is justified by the statute, and they can avail themselves of its exceptional provisions and charge more for the shorter distance for the purpose of equalizing commercial conditions and adjusting trade relations between the cities of Cincinnati and Baltimore in the Augusta market, the same
91 thing may be done to place Cincinnati carriage-makers on an equal footing with those of Augusta market, or to relieve any city from any disadvantage in markets of other cities, or to deprive all cities or places of production of any advantage resulting from their location. Such an interpretation would make the fourth section of the act practically inoperative, and with such license in rate-making carriers might give advantage to build or destroy the carriage or other business of any other city or locality.

It is certainly true that competition of this character is more uncertain in its effect and more difficult to ascertain in character and extent than competition of carrier with carrier. In the case of competition of market with market many questions of commercial facilities and advantages of competing points would have to be considered, and it is not perhaps as direct in its effect as competition of carrier with carrier. Still, illustrations have been given by witnesses in this case of competition of market with market which would seem to be absolutely controlling with the railroads in rate-making. In this case it is contended that competition with the Baltimore market for the sale of buggies is an element to be considered in making the rate from Cincinnati to Augusta. It is contended that if the rates were higher the Cincinnati manufacturer would be deprived entirely of the trade with Augusta, and it is urged that this is true of other eastern cities having communication by the ocean lines with the southern seaboards and thence by rail to Augusta. Competition of this character may not be so direct in its effect as competition of carrier with carrier, but it seems to be, when it does exist, influential, and perhaps as effective and controlling with the carriers as to their rates as other competition, and may constitute a part of the circumstances and conditions which a carrier can consider in fixing rates for transportation of goods.

5. As to the question of undue preference, under section 3 of the act to regulate commerce, it may be stated that unless the traffic involved here is obnoxious to the fourth clause of the act it can hardly be said to be an undue preference in favor of Augusta, or to the undue prejudice or disadvantage against Social Circle. In the party rate case, Interstate Commerce Commission *v.* Baltimore and Ohio Railroad Company, 145 U. S., 263, the Supreme Court say:

But so far as relates to the question of "undue preference," it may be presumed that Congress in adopting the language of the English act, had in mind the constructions given to these words by the English courts and intended to incorporate them into the statute. * * * In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances, and

that any act which produces an inequality of condition and a change of circumstances justifies an inequality of charge.

So that, unless the rates complained of, as compared with each other, violated the fourth section of the act, there seems to be very little ground for claiming that they violated the "undue preference" provision of the third section.

6. It appears from the evidence in this case that nearly all the railroads south of the Ohio river and east of the Mississippi,
92 including the three railroads defendants here, are members of an association known as the Southern Railway and Steamship Association. The purpose of this association is claimed by counsel for the railroads to be to prevent ruinous and disastrous competition and to keep the rates at a point where the railroads can be successfully operated. On the other hand, it is contended that the claim of the advocates of the association, that the purpose of the railroads entering into it is self-preservation, is not correct, but that it is rather a combination to keep up rates. Whatever may be the fact about this (and discussion of that question is deemed unnecessary now), it seems unquestionably true that the association in making rates is governed by competition. The same influences seem to control in the association in making rates as would control without it, and while the influences may not go to the same extent and there may be procured by it more harmonious relations and understanding, still it seems to be a fact that competition influences and to a large extent controls the rates agreed upon by this association.

7. The evidence in this case shows several lines of railroad competing for the business between Cincinnati and Augusta in this way; there are two direct lines between Cincinnati and Atlanta—one over the Louisville and Nashville and Western and Atlantic roads, the other over the Cincinnati, New Orleans and Texas Pacific Railway Company and East Tennessee, Virginia and Georgia Railroad Company. Then there are other lines which could compete, but over which, as a matter of fact, there does not appear to be real competition between Cincinnati and Atlanta, as they are indirect routes and are probably at a disadvantage as against the two more direct routes just named. All these different lines, however, from Cincinnati to Augusta converge at Atlanta and go thence over the Georgia railroad to Augusta. This is competition of carrier with carrier, which is said to constitute dissimilar circumstances and conditions.

There is competition of Baltimore and other eastern cities with Cincinnati for the trade of Augusta; and that it is active and influential is quite clearly shown by the evidence. Indeed, it is much more satisfactorily shown than is the competition of carrier with carrier from the point of shipment to the point of destination.

8. In view of the opinion expressed, that the carriage from Cincinnati to Augusta is not over the same line, in contemplation of the statute, as the carriage to Social Circle, a determination of the extent and effectiveness of the competition at Atlanta, as constituting dissimilar circumstances and conditions under the fourth sec-

tion, is unnecessary. It may be added that the competition from Cincinnati by way of the trunk lines to the seaboard, thence by water to Charleston and Savannah, and thence by rail or water to Augusta, seems hardly to be sufficient to justify its recognition in this connection. The same may be said of all water routes from eastern markets by the ocean and by the Savannah river to Augusta. The evidence fails to show any such amount of
93 shipments either way as could at all effect the justice of the rates in question in this case.

9. The only remaining matter to be disposed of is that of the reasonableness of the rate charged on first-class goods in less than car-load lots from Cincinnati to Atlanta.

This is a through rate, and it is interstate commerce subject to the control of the commission. The commission determined that the rate paid should be $1, and ordered that the roads interested should not charge more than $1. The following language is used on this subject by the commission in its report and opinion:

The only testimony offered or heard as to the reasonableness of the rate to Atlanta in question was that of the vice-president of the Cincinnati, New Orleans and Texas Pacific Company, whose deposition was taken at the instance of said company.

The witness testified that he had been in the railroad service about 26 years and had much to do with rates during all that time, and that he considered $1.01 per 100 pounds in less than car-loads a reasonable rate on first-class freight from Cincinnati, Ohio, to Atlanta, Ga.

This statement of estimate of the rate from Cincinnati to Atlanta, we believe, is fully as high as it may reasonably be, if not higher than it should be, but without more thorough investigation than it is now practicable to make, we do not feel justified in determining upon a more moderate rate than $1 per 100 pounds of first-class freight in less than car-loads.

The rate on this freight from Cincinnati to Birminghan, Ala., is 89 cents as compared with $1.07 to Atlanta, the distances being substantially the same. There is apparently nothing in the nature and character of the service to justify such difference, or, in fact, to warrant substantial variance in the Atlanta and Birmingham rates from Cincinnati.

It will be perceived that the only finding of fact was the testimony of one witness that the rate of $1.01 was reasonable and the comparative rate to Birmingham, on which the commission seems to lay stress. It seems that for a short time at least a rate of $1.01 was in force from Cincinnati to Atlanta, and that it was as to this rate that the testimony of one witness before the commission was taken. It appears in evidence here that the rate from Cincinnati to Atlanta in 1879 was $1.39, and that afterwards it was $1.10, and subsequently $1.07, except, perhaps, as stated, it was for a short time $1.01. As to the rate to Birmingham, there is evidence before the court which was evidently not before the commission, namely, that the rate from Cincinnati to Birmingham, which seems previously to have been $1.08, was forced down to 89 cents by the building of

the Kansas City, Memphis and Birmingham railroad, which new road caused the establishment of a rate of 75 cents from Memphis to Birmingham, and by reason of water route to the northwest such competition was brought about that the present rate of 89 cents from Cincinnati to Birmingham was the result. It seems to be no sufficient reason to determine the rate from Cincinnati to Atlanta unreasonable because of the lower rate to Birmingham, when such lower rate is caused by conditions which do not operate as to Atlanta.

So far as the action of the commission, in ordering a re-
94 duction of the rate from Cincinnati to Atlanta, is based on the fact that the same rate is charged to Augusta, that has, perhaps, been sufficiently discussed in what has hereinbefore been said with reference to the long and short haul clause. The rate to Augusta is caused by conditions which have been stated. No data is given the court from which it can judge whether the rate from Cincinnati to Atlanta on first-class freight, taken in connection with the rates which can be charged and are charged on other and lower classes of freight, gives more than a fair return to the railroads composing the lines, and the court is left to the findings of the commission and to the testimony of a number of railroad experts, who testified that the rate of $1.07 is reasonable.

There is some difficulty in determining what the duty of the court is in a matter of this kind under the interstate commerce act. If the conclusion of the commission that the rate is unreasonable is *prima facie* correct, under the language used, that "the findings of fact in the report of said commission shall be *prima facie* evidence of the matters therein stated," then the report of the commission would have greater weight with the court than if only facts found, strictly speaking, are to be deemed *prima facie* correct; but in either event, if this is, as has been held, a *de novo* investigation and inquiry is to be instituted here under new pleadings and new evidence, the court must be satisfied on the whole case before it that the rate of $1.07 is unreasonable.

In the case of Interstate Commerce Commission *vs.* Lehigh Valley Railroad Company (47 Fed. Rep., 177) the court used this language:

But then again, upon an analysis of the above-quoted provisions of section 16, it is demonstrable that in such a case as this it is the duty of the court to investigate the merits of the whole controversy and form an independent judgment. The court, upon a petition alleging the violation of "lawful" order, is to proceed to "hear and determine the matter as a court of equity in such manner as to do justice in the premises;" and to this end it may prosecute in such mode and by such persons as it may appoint all "needful inquiries" to enable it to "form a just judgment," in the matter of the petition; and finally, "on such hearing the findings of fact in the report of said commission shall be *prima facie* evidence of the matter therein stated." Nothing can be clearer than that the findings by the commission are not here decisive of the questions of fact. We have only to add that our conclusion is in harmony with that of the circuit

court in the case of Kentucky, etc., Bridge Co. *v.* Louisville & Nashville Railroad Company, 37 Fed. Rep., 567.

The court is to "investigate the merits of the whole controversy and form an independent judgment," according to this last decision; and according to Judge Jackson, in the case of K. & I. Bridge Co., 37 Fed. Rep., 614, the "court is not confined to a mere reëxamination of the case as heard and reported by the commission, but hears and determines the case *de novo* upon proper pleadings and proof, the latter including not only the *prima facie* fact reported by the commission, but all such other and further testimony as either party may introduce bearing upon the matters in controversy." The conclusions should undoubtedly be considered in connection with the facts on which that conclusion was based, and the principal fact which seems to have been in mind of the commission are
95 satisfactorily explained here, as has been indicated. The evidence offered here on behalf of the railroad is, in the opinion of the court, sufficient to overcome any *prima facie* case that may have been made by the findings of the commission. On the whole testimony as now before the court it is not believed that the commission would have found the rate in question unreasonable. Certainly, the court cannot so determine.

It has been earnestly insisted that the action of the commission, as to the rate from Cincinnati to Atlanta, is in effect making or fixing a rate, and that the order of the commission is, for that reason, beyond the authority granted it by the act of Congress. In view of what has just been said and the opinion of the court, before expressed as to this rate, it is deemed unnecessary to go into a discussion of this subject.

The conclusion is, that the court would not be justified in granting the order prayed for by the commission, requiring the defendant corporations to desist from charging a greater rate than $1 per 100 pounds on first-class freight in less than car-load lots from Cincinnati to Atlanta. The court, being of the opinion, therefore, that the complainants are not entitled to a decree enforcing either its order as to the Social Circle rate or the rate from Cincinnati to Atlanta, and that being the only relief prayed for, a decree must be entered dismissing the bill.

This June 3, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office June 3, 1893.

O. C. FULLER, *Clerk.*

Final Decree.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court that the matters of equity alleged in the bill are fully denied in the answers and are not sustained by the proof, and therefore that said bill be dismissed. It is further ordered, adjudged, and decreed by the court, that the costs of this cause be paid one-half by the complainants and the other half by the defendants.

In open court this June 5, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office June 5, 1893.

O. C. FULLER, *Clerk.*

96 In the Circuit Court of the United States, Northern District of Georgia.

Petition for Appeal.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

To the honorable judge of said court:

Your petitioner, The Interstate Commerce Commission of the United States, the complainant in the above-stated case, respectfully represents that the matter in dispute in said case exceeds the sum or value of $5,000, exclusive of costs, and that in the final decree of this court, rendered in favor of the respondents on 3d day of June, 1893, there is manifest error committed to the injury of this petitioner.

Wherefore, petitioner, The Interstate Commerce Commission of the United States, being a department of the Government, prays an order granting an appeal from said decree to the United States circuit court of appeals for the fifth circuit.

JOS. S. JAMES,
District Attorney.
A. G. SAFFORD,
ROB'T L. BERNER,
Special Attorneys for Commission.

Filed in clerk's office June 22, 1893.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States, Northern District of Georgia.

Order Allowing Appeal.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

The grant of appeal.

In this cause the Interstate Commerce Commission of the United States, having made its application in writing for an appeal
97 from the final decree therein to the United States circuit court of appeals for the fifth circuit, the said petitioner being a department of the Government, and this appeal entered as such, and it appearing to my satisfaction that the matter in dispute in said intervention exceeds the sum or value of $5,000, exclusive of costs, it is therefore ordered, adjudged, and decreed that said application for said appeal be, and the same is hereby, granted and made returnable not exceeding thirty days from this date, and that the same be filed in this court.

This 22d day of June, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office June 22, 1893.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States, Northern District of Georgia.

Assignment of Errors.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.
No. 390. In Equity.

In this cause, being an appeal from the decree of the court in the above-stated case, comes the appellant, The Interstate Commerce Commission for the United States, by its solicitors, and charges and shows that there is manifest errors to its injury in the record, and because thereof assigns the following grounds:

1. The court erred in holding that it had the power, under the interstate commerce act, to hear the case upon issues and pleadings other than those presented to the commission at the original hearing. The contention of the appellant was that the court was restricted to those issues which were raised by the pleadings before the Interstate Commerce Commission, and that no evidence could

be offered or considered by the court except such as would be admissible under the issues raised in the pleadings before the commission.

2. The court erred in holding "that the traffic from Cincinnati to Social Circle, as to the Georgia Railroad Company, is local, and that company is not, on the facts presented, made a party to a joint or common arrangement such as makes the traffic to Social Circle subject to the control of the Interstate Commerce Commis-
98 sion, and in holding that the defendant carriers did not constitute a line from Cincinnati to Social Circle."

3. That the court erred in holding "that the arrangement for a through rate, for there is unquestionably a joint tariff from Cincinnati to Augusta, constitutes a 'new line' from Cincinnati to Augusta, and following Osborn *vs.* Chicago and Northwestern Railroad Company and The United States *vs.* Mellen and others, traffic to a local point on the Georgia railroad at strictly local rates cannot be compared with traffic over the 'new line' from Cincinnati to Augusta for the purpose of raising a question under the long and short haul clause of the interstate commerce act."

4. The court erred in holding that competition constitutes a dissimilar circumstance and condition under the fourth section of the interstate commerce act, and that competition, generally speaking, must be considered in applying the phrase "under substantially similar circumstances and conditions" in any given case.

5. That the court erred in holding that competition of carrier with carrier, both subject to the act, constitutes substantially such a similar circumstance and condition as will relieve the carrier from the operations of the fourth section of the interstate commerce act, and in holding that such competition will authorize the carrier to act upon its own judgment in charging a greater rate for the shorter than the longer haul without first invoking the exercise of the discretion of the commission provided for in said section.

6. That the court erred in holding that competition of market with market constituted such a dissimilar circumstance and condition as would relieve the carrier from the operations of the fourth section of the act on its own judgment in charging a greater rate for the shorter than the longer haul, without first invoking the exercise of the discretion of the commission provided for in said section.

7. That the court erred in holding that the rate from Cincinnati to Augusta, and from Cincinnati to Social Circle, was not an undue preference under section third of the act to regulate commerce in favor of Augusta, or an undue prejudice or disadvantage against Social Circle.

8. That the court erred in holding that the rates of freight established and maintained by the Southern Railway and Steamship Association, of which the defendant carriers are members, are fixed and governed by competition.

9. That the court erred in holding that the evidence in the case showed that there was competition of carrier with carrier between Cincinnati and Atlanta, and that said competition is real and influential.

10. That the court erred in holding that the evidence showed the existence of competition of Baltimore and other eastern cities with Cincinnati for the trade of Augusta, and that said competition was active and influential.

99 11. That the court erred in holding that it was not justified in granting the order prayed for by the commission, requiring the defendant corporations to desist from charging a greater rate than $1 per hundred pounds on first-class freight in less than car-load lots from Cincinnati to Atlanta, and in refusing to grant said order as prayed for.

12. That the court erred in not holding that competition is excluded as a differentiating circumstance and condition in the fourth section of the act to regulate commerce.

13. That the court erred in not holding that as to competition of carrier with carrier, subject to the act, the circumstances and conditions are not presumptively dissimilar, and that the carrier in all such instances of competition must first invoke the exercise of the discretion vested in the commission before charging a greater rate for the short than for the long haul.

14. That the court erred in not holding that the competition of market with market did not constitute a dissimilar circumstance and condition, and in not holding that in all such instances of competition the carrier should first invoke the discretion vested in the commission before charging a greater rate for the short than the long haul.

15. That the court erred in not passing upon the various objections to the admission of testimony set forth in the record of the evidence.

16. That the court erred in not holding that the three defendant carriers constituted a line in contemplation of the fourth section of "the act to regulate commerce" from Cincinnati to Social Circle.

17. That the court erred in holding that the complainants are not entitled to a decree enforcing either its order as to the Social Circle rate or the rate from Cincinnati to Atlanta and in dismissing the bill (copy of which order is attached to the bill), and on refusing the injunction prayed for, restraining the defendants, their officers, servants, and attorneys from further continuing in violation and disobedience to the said order of the commission.

18. That the court erred in not finding and granting a decree, under the law and evidence in the case, enforcing the order of the Interstate Commerce Commission as prayed for in the bill, and granting the injunction prayed for, restraining the defendants from violating and disobeying the order of the commission.

JOS. S. JAMES,
A. G. SAFFORD,
ROB'T L. BERNER,
Attorneys for Commission.

Filed in clerk's office 22d day of June, 1893.

O. C. FULLER, *Clerk.*

100 In the Circuit Court of the United States, Northern District of Georgia.

Citation.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. } No. 390. In Equity.

The United States of America to the Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, the Georgia Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fifth circuit, to be holden at New Orleans on the third Monday of November, 1893, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Georgia, in equity, wherein "The Interstate Commerce Commission" of the United States is appellant, and you, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company are appellees, to show cause, if any there be, why the final decree rendered in favor of the said appellees, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 22d day of June, in the year of our Lord one thousand eight hundred and ninety-three.

WM. T. NEWMAN,
United States Judge.

Filed in clerk's office 22d day of June, 1893.

O. C. FULLER, *Clerk.*

Acknowledgment of Service on Citation.

We acknowledge due and legal service on the within citation, and waive copy of the same and any and all further service.
This June 22, 1893.

EDWARD COLSTON,
GEO. HOADLEY, JR.,
For the Cincinnati, New Orleans and Texas Pacific Railway Company, Appellee.

101 & 102 We acknowledge due and legal service on the within citation, and waive copy of the same and any and all further service.

This June 22, 1893.

THE WESTERN AND ATLANTIC RAILROAD COMPANY.
THE GEORGIA RAILROAD COMPANY.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA, LESSEES OF THE GEORGIA RAILROAD,
By ED. BAXTER, *Solicitor.*

103–108 THE INTERSTATE COMMERCE COMMISSION *vs.* CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et als.* } No. 390.

In the United States Circuit Court for the Northern District of Georgia, Sitting at Atlanta.

Testimony.

109 United States Circuit Court, District of Georgia.

INTERSTATE COMMERCE COMMISSION *vs.* CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.*

Testimony of Gen. E. P. Alexander in the Case..

E. P. ALEXANDER, a witness called by the defense, was then sworn and examined by Mr. BAXTER:

1 Q. Please state your name, age, residence, and occupation.

A. E. P. Alexander; residence, Savannah, Ga.; occupation, president of the Central Railroad and Banking Company of Georgia and several other subsidiary companies; age, 56.

2 Q. State how long you have been connected with the traffic department of the railroad service of the United States and what official positions connected with that service you have held during that time.

A. I have been connected with the traffic department of different roads to a greater or less extent for nearly twenty-one years, holding the positions of superintendent of Charlotte, Columbia and Augusta railroad; president Savannah and Memphis railroad, Georgia railroad, Western Railroad of Alabama; vice-president Louisville and Nashville railroad; president Central Railroad and Banking Company of Georgia; Government director of Union Pacific rail-

road; president Ocean Steamship Company of Savannah, and several other minor companies at different times.

3 Q. State whether or not the phrase "under substantially similar circumstances and conditions" as connected with the railroad transportation of passengers and property in the United States was, at and prior to February 4, 1887, a railroad-traffic term.

(Counsel for plaintiff here objects to the answers sought to be elicited by this question, for the reason that the same would be irrelevant and incompetent.)

A. The phrase quoted has a history. It came first into use in 1886 during the discussion preceding the passage of the interstate commerce act. During that discussion this phrase was crystallized in its present shape, and became what might be called a household word, replacing several more colloquial but less exact expressions, "under similar circumstances," "under like conditions," etc., by introducing the qualifying adverb "substantially," which had before been generally understood, but not expressed in offhand discussions.

110

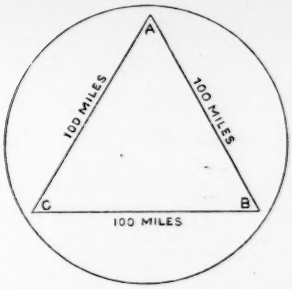
4 Q. State what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States at and prior to February 4, 1887.

(Counsel for plaintiff here objects to the answers sought to be elicited by this question, because the same would be irrelevant and incompetent.)

A. The words "circumstances and conditions" came into this new phrase with the same meanings they bore in the old, and were universally understood to refer to those circumstances and conditions which cut a figure in rate-making, or, as I might call them, those conditions which are rate-controlling. These rate-controlling conditions are generally recognized as cost of service, and value of service, and character of competition, though the latter condition is really but one phase of the second. Substituting, therefore, in the phrase in its present shape the equivalent expressions, the meaning of the phrase may be stated as "identity of cost of service and value of service" considering character of competition.

5 Q. Please explain fully how or in what respect the existence of competition between carriers affects, if at all, the circumstances and conditions under which the transportation of property is conducted.

A. Competition between two carriers lessens the reasonable rate which that carrier would otherwise obtain who is at a comparative disadvantage in the competition. I wish to illustrate by a simple diagram or figure, as follows:



Imagine three cities, A, B, and C, situated at the three angles of an equilateral triangle, each side being an independent railroad 100 miles long; there will then be two ways to ship goods or to travel from A to B: First, direct 100 miles via the A B railroad; second, via the A C railroad to C, and then via the C B to B, in all 200 miles. Now, it is plain that if the two roads, A C and C B,
111 wish to compete for the travel and freight between A and B (and they always do), they cannot charge more for their roundabout haul than the direct route A B charges. If A B charges $3 or 3 cents a mile, A C and C B must accept 1½ cents a mile, for the value of the service rendered is only $3, and via their route that value has to be spread over 200 miles of road. Now, on the very same train starting from A may go two passengers; one is going to stop at C; he properly pays $3, or 3 cents a mile, because it is worth $3 to get from A to C. The second is going through C to B; he properly pays but 1½ cents a mile, for it is only worth $3 to take him all the way to B, no matter by what route he travels. The long route, therefore, is rendering that passenger a less service per mile. This figure illustrates in principle every case of competition between carriers. If instead of a triangle we draw a circle between the three points, A, B, and C, or any sort of closed line, the competition would be of the same character and have the same effect. The only essential feature of the figure is that there should be two routes from A to B.

(Counsel for plaintiff objects to all the answers to the last question as being argumentative, irrelevant, and incompetent.)

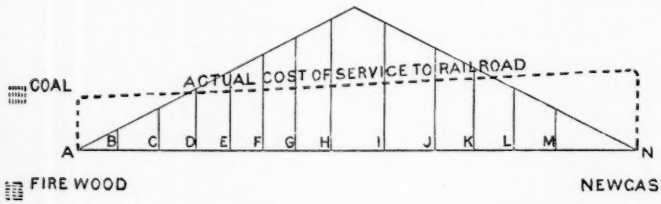
6 Q. What difference, if any, does it make where both carriers are rail carriers or both of them water carriers or one of them is a rail carrier and the other is a water carrier, so far as the effect of their competition is concerned?

A. It makes no difference whatever, because all competition has the same effect of diminishing the value of the service rendered by the party having the longest or poorest route. The source of the competition has nothing to do with the case; it might be by balloon.

(Counsel for plaintiff objects to answer to last question, because the same is irrelevant and incompetent.)

7 Q. Please explain fully how or in what respect the existence of competition between markets or products affects, if at all, the circumstances and conditions under which the transportation of property is conducted.

A. Competition between markets and markets or between product and product both act as any other competition does, by virtue of their diminution of the value of service rendered. The principle underlying the whole matter is contained in the old proverb about "carrying coals to Newcastle." Newcastle being supposed to produce coal cheaper than any other place, the cost of carrying coal there from a distance may be very great, but the value of service rendered absolutely nothing. So, too, to carry coal to a point 10 miles this side of Newcastle may be worth a small sum, while to stop it a hundred miles this side would be worth still more. The competition between products may be illustrated by supposing a man to ship firewood to Newcastle. He would find no grates
112 there fitted to burn wood, and carrying wood there might be even a poorer venture than carrying coal. I will illustrate by another diagram, as follows:



NOTE.—The dotted line indicating cost of service does not refer to the average cost of all service, but to the actual extra cost of hauling the particular business in question as compared with letting it alone. This, of course, is much less than the average cost of all business, as many fixed expenses would neither be increased or diminished by doing it or letting it alone. Diagram shows railroad cannot afford to handle the business at all between A and C, nor between L and Newcastle, but it would have profit on all between C and L.

(Signed) E. P. ALEXANDER.

Suppose a railroad starting from A runs due east with stations B, C, D, etc., down to N, which is Newcastle, and that a material part of the road's business is hauling firewood and coal produced at A. We have now a perfect illustration of the effect of competition of market with market and of product with product. The value of the service rendered, and consequently the rate which may be charged for hauling coal and firewood from A toward Newcastle will increase gradually as we go east via B, C, and D, until we begin to meet the influence of the superfluity of coal at Newcastle coming west. Somewhere, say about H, the possible rate for both coal and firewood will reach a maximum, beyond which as we go toward Newcastle the possible rate to each station will grow less and less

until it comes to zero at Newcastle. I illustrate on the diagram by vertical lines at each station representing the rate which may be charged.

(Counsel for plaintiff here objects to all the answers to the last question, because the same are hypothetical, argumentative, irrelevant, and incompetent.)

8 Q. Suppose buggies can be manufactured at Cincinnati, Ohio, at the same cost to the manufacturer as at Baltimore, Md., and suppose that both of those cities desire to sell buggies in Augusta, Ga., what relation, if any, must exist between the rate from Cincinnati to Augusta, and the rate from Baltimore to Augusta, and state your reasons.

Ans. The value of the service rendered in taking a buggy from either place to Augusta would be exactly the same; therefore if the rate charged for rendering a service of that value were in the one case less than the other, the place having the lowest rate would have a monopoly of the business.

113 (Counsel for plaintiff objects to the answer to the last question, because the same is irrelevant and incompetent.)

9 Q. Suppose, under the facts stated in question No. 8, the rate on business from Baltimore to Augusta was made materially lower than the rate on business from Cincinnati to Augusta, I understand from your last answer that one of the effects would be to give Baltimore a monopoly of the sale of buggies in the Augusta market. What effect would it have upon Cincinnati as a place for manufacturing buggies; what effect would it have upon the transportation lines leading from Cincinnati to Augusta, and what effect would it have upon the Augusta market as a place for purchasing buggies?

Ans. It would deprive the buggy manufacturer in Cincinnati of a valuable market, the roads leading to Augusta from Cincinnati of valuable business, and would tend to raise the price of buggies in Augusta, or at least permit it to be done, by allowing the man who bought his buggies in Baltimore to fix upon them a price as much higher than he would otherwise charge as the rate from Cincinnati to Augusta was higher than the rate from Baltimore to Augusta.

(Counsel for plaintiff objects to answers to the last question because the same are irrelevant and incompetent.)

10 Q. Please state whether or not Augusta is located upon a river which is navigable from the sea up to Augusta, and what city is located at the mouth of that river.

Ans. Savannah at the mouth of the river, and it is navigable for steamboats to Augusta usually during the entire year. These steamboats run in connection with steamers from Baltimore.

11 . Please state what railroad lines, if any, run from the seacoast to Augusta.

Ans. The Central railroad from Savannah, the Port Royal and

Augusta from Port Royal, the South Carolina to Charleston. By indirect connections also Brunswick on the south and Wilmington and Norfolk on the east are also reached by rail.

12 Q. State what lines of steamships, if any, ply between Boston, New York, Philadelphia, and Baltimore on the one side, and Norfolk, Wilmington, Charleston, Port Royal, Savannah, and Brunswick on the other side.

Ans. The principal lines are under control of the Ocean Steamship Company, of Savannah, and the Old Dominion Steamship Company. I won't be sure that I have mentioned all of the companies running to the Chesapeake Bay points.

(NOTE.—The Ocean Steamship Company operates to Savannah; the Old Dominion Steamship Company operates to Norfolk and West Point; the Clyde Steamship Company has a regular line to Charleston; the Mallory line operates steamers regularly to Brunswick, and the Merchants' and Miners' to Norfolk, West Point, and Savannah.)

13 Q. State what lines of railroad, if any, run from Cin-
114 cinnati, Ohio, to Boston, New York, Philadelphia, Baltimore, Norfolk, and Wilmington.

Ans. There are more of them than I can state definitely offhand, but the principal ones I believe are New York Central and Hudson River, the Erie, the Pennsylvania Central, Baltimore and Ohio, and Chesapeake and Ohio.

14 Q. State whether or not freights can and have been carried from Cincinnati via the rail lines mentioned in your last answer to New York, Philadelphia, Baltimore, and Norfolk, and thence via ocean to Charleston and Savannah and from Savannah, by river to Augusta, at rates that materially affected the rates charged by transportation lines operating from Cincinnati via Atlanta to Augusta.

Ans. Yes, freights are brought from many western points, as far west even as Chicago, and often in considerable quantities to New York, Baltimore, and Philadelphia, thence by water to Charleston and Savannah, and thence into the interior by rail and water. There is one peculiar condition of transportation on the ocean which gives the competition by this route peculiar strength. All the sailing vessels and steamships plying from southern ports north have better cargoes bound north than when coming south. Going north they carry lumber, naval stores, cotton, etc. Now, the vessels at sea require a considerable loading for safety and stability, and the south-bound coasting trade rarely has enough freight to give them even all the ballast they would like to have, consequently they will take products from the west bound to southern ports at any rate which will more than pay the cost of handling, as they really need the freight for ballast.

15 Q. State what rail lines, if any, extend from New York, Philadelphia, and Baltimore to Augusta, and whether those lines can or cannot in connection with the trunk lines compete for freight between Cincinnati and Augusta.

Ans. The principal and most direct rail routes from Augusta to Baltimore and eastern cities are the Richmond and Danville lines, and the Atlantic Coast lines, and their connections. These lines can and do compete even with the south-bound steamers and sailing vessels.

16 Q. Can the lines mentioned in your last answer in connection with the trunk lines successfully compete for business between Cincinnati and Augusta with the lines running from Cincinnati via Atlanta to Augusta?

Ans. I don't know how much is intended to be conveyed by the word successfully, but they can certainly participate in the business if they choose.

Cross-examination by S. A. DARNELL:

1 Q. Let us now come to the facts in connection with this particular case, and let me inquire why, if it be the fact that first-class rate of freight, as published in the tariff of the Cincinnati,
115 New Orleans and Texas Pacific Railway Company from Cincinnati, Ohio, to Atlanta, Ga., say 477 miles, is $1.07 per 100 pounds, when for hauling the same kind and quantity of freight over the same line of railroad from Cincinnati, Ohio, to Augusta, Ga., a distance of say 648 miles, the rate per 100 pounds is no greater.

A. The rate is no greater because the value of the service rendered is no greater. The cost of rendering it, of course, is greater in the latter case and the railroads would doubtless be only too happy if they could compensate themselves for this increased service by an increased rate, but the conditions of competition at Augusta have reduced the value of the service rendered to such an extent that they may perhaps consider themselves fortunate in being able to get even the same price for the greater service. The case is parallelled exactly by the illustration I have given of carrying coal towards Newcastle; a longer service has failed to produce a greater value.

2 Q. How does this apply to the facts of this particular case, and particularly with reference to the matter of competition of railroads, steamship, and steamboat lines?

A. Yes; that is the case itself. It is the competition by various routes to Augusta.

3 Q. Now, let us suppose it to be 648 miles from Cincinnati, Ohio, to Augusta, Ga., over the lines of railroad involved in this case, that the rate on first-class freight per 100 pounds is $1.07, that the distance from Cincinnati, Ohio, to Social Circle, Ga., is say 525 miles, and that the rate on first-class freight between Cincinnati and Social Circle is $1.37 per 100 pounds, or say 30 cents more per 100 pounds than from Cincinnati to Augusta, what is the logic of such a business arrangement?

A. The logic of that arrangement is the inexorable logic of circumstances. If railroads could graduate their charges by the cost of rendering the service, and charge in each case a moderate profit on that cost, the whole railroad problem would be very simple, but

for many reasons, too numerous to specify here, it has been found the world over impossible to fix a tariff based upon the cost of service. It is impossible in the Post Office Department, where the Government charges thirty times as much for some services as for others. It is impossible in law, where the attorney charges his client in proportion to the value of service rendered and not in proportion to the cost of rendering it. Similarly, the world over, all railroads are driven by the logic of circumstances to fix their rates as nearly as can be in proportion to the value of service rendered. It is worth more to transport cotton than to transport coal, and so they charge more. It is worth more to transport goods from Cincinnati to Social Circle via Atlanta than it is to transport them from Cincinnati to Augusta via Atlanta; as before, the principle involved in this case is illustrated perfectly by my diagrams and answers in direct examination. The eastern cities, from Baltimore to
116 Boston, stand in relation to first-class freight about as Newcastle does to coal. So, such freight starting from the West and going via Atlanta toward the seacoast meets similar freights coming from those cities by many routes, and the value of the service rendered diminishes the farther that way it goes, just as the value of the coal diminished as it went toward Newcastle.

E. P. ALEXANDER.

117 It is agreed that the following original and cross interrogatories may be answered by Albert Fink, of Louisville, Ky., at any time or place, provided that his answers are filed by the second Monday in March, 1892.

His answers may be sworn to before any notary public, and his answers, together with said interrogatories, will be enclosed by the notary in a sealed envelope to the clerk of said court.

Formal caption and certificate are hereby waived, but all objections to the competency of the witness, or the relevancy of the testimony, is hereby expressly reserved.

This 19th day of February, A. D. 1892.

JOS. B. CUMMING,
ED. BAXTER,
Solicitors for Defendants.
S. A. DARNELL,
Solicitor for Plaintiff.

(Similar agreements were made by the same counsel in regard to taking the depositions of M. H. Smith, J. F. Goddard, W. H. Newman, J. C. Stubbs, and Geo. R. Blanchard.)

And now comes the Interstate Commerce Commission, and by its attorney, objects to all and every of the direct interrogatories herein, because witness to whom the same are directed is not competent, and because the testimony sought to be adduced from said witness is not relevant, and is not responsive to the issue joined in said cause.

S. A. DARNELL,
United States Attorney, for Interstate Commerce Commission.

(Similar objections were filed to the interrogatories propounded to M. H. Smith, J. F. Goddard, W. H. Newman, J. C. Stubbs, and George R. Blanchard.)

Interrogatories on behalf of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, sued by the name of the Georgia Railroad Company.

118 *Testimony of Albert Fink, of Louisville, Ky.*

Int. 1. State your name, age, residence, and occupation.

Ans. to Int. 1. Name, Albert Fink; age, 65 years; residence, Louisville, Ky.; occupation, retired from business.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. I have been connected with the traffic department of railroad service from 1865 to 1889. I was general manager and vice-president of the Louisville and Nashville Railroad Company from 1865 to 1875, and commissioner of the Southern Railway and Steamship Association, and also of the Trunk Line Association, from 1875 to 1889.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions," as connected with the railroad transportation of passengers and property in the United States, was, at and prior to February 4th, 1887, a railroad-traffic term.

Ans. to Int. 3. I cannot tell at what time the phrase "under substantially similar circumstances and conditions," as connected with the railroad transportation of passengers and property in the United States originated, but the phrase, "under the same circumstances," was in the English railway clauses consolidation act of 1845, and the phrase, "under like circumstances," was in English regulation of railways act of 1868. Expressions of similar import were in use in the United States among railroad managers and officers prior to February 4th, 1887.

For example, in the annual report of the Louisville and Nashville Railroad Company for the fiscal year ending June 30th, 1874, in speaking of the duties of common carriers, I say that "he must treat all (shippers) alike that are situated alike," by which I meant he must treat them alike "under the same circumstances and conditions." I find also that in my testimony before the Committee of Commerce of the House of Representatives, January 6th, 1884, in answering questions as to what determines the making of railroad rates, I answered, "The conditions and circumstances of the case determine it."

119 Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States.

Ans. to Int. 4. The expressions above referred to in my answer

to question three have reference to the conditions controlling the establishment of transportation rates. These conditions are many, and are of a very complicated nature. It is rather difficult to explain the same without writing a treatise on the subject, but I will, as briefly as possible, mention the principal ones. The first one is the cost of transportation. Whenever it is practicable a carrier will charge, and it would seem has a right to charge, enough to compensate him for the service he renders, but in practice this principle, although theoretically correct, is modified by a great many other conditions and circumstances. Thus, a carrier cannot charge more than the service is worth to the shipper, and if the full cost of transportation exceeds that value, he has to reduce the rates in order to make it possible for the shipper to move the property from one market to another. No property can be transported from one market to another except the difference in the value of that article in the two markets, or the market price, is sufficient to justify the charges made for transportation. This is an important condition influencing the establishment of rates.

In order to show to what extent common carriers may make variation in charges when the full and actual cost of transportation cannot be charged, it is necessary to explain to some extent the elements of which transportation charges consist. Under the full cost of transportation I include the cost of operating the road plus a reasonable interest on the capital invested. If it is impracticable to charge interest on the capital invested, it may become necessary in order to secure business that can only be secured by a reduction of rates, to include only a portion of the interest charge, or perhaps none at all. For illustration:

Of the charges now made by the railroads of the United States about sixty per cent. is absorbed in operating expenses and forty per cent. remains for the payment of interest on bonds and dividends on stock, amounting, I believe, to about four per cent. on that indebtedness. Assume these figures to be approximately correct (they are of course different on every railroad), it would appear that a railroad company desiring to secure business may
120 reduce its rate, based on the cost of transportation, forty per cent., making no charge for interest on the investment, or vary its rates between the limits of no charge for interest and forty per cent., according to the circumstances and conditions which may make such reductions necessary, without thereby incurring actual loss, but simply reducing the profits on the business. But there is another feature to be considered, namely: in the cost of operating a road there are a great many items which are independent of the amount of work done.

Thus, a general organization has to be kept up, the roadway, buildings, etc., have to be kept in repair, and there are many other expenses which are not influenced by the volume of business transacted. The proportion of the operating expenses which are thus independent of the volume of business vary on different roads.

They are generally from twenty to thirty-five per cent. of the total operating expenses. Assuming about twenty per cent., it appears

that the expenses that are not dependent upon the amount of business transacted on a road which already transacts a fair amount of business at reasonably paying rates amount, including interest charges, to sixty per cent. of the charges made to the public. When, therefore, any railroad carrier is by competition with other carriers, or by competition of markets, obliged and forced to take business at a much lower than the full-paying rate, he can make a reduction of as much as sixty per cent. of a rate based on the full cost of transportation in order to secure business which he otherwise could not obtain. Of course, he would make no money under such circumstances, and all the business of the road could not be transacted at these exceedingly low rates; the road would not even pay the operating expenses, it would be bankrupted and could not be operated at all. This peculiar feature of the cost of railroad transportation arising from the large permanent investment, must be understood in order to explain the possibility of making very low rates, when competition required it as compared with the reasonably and better paying rates based upon, or nearly so, the full cost of transportation. For example, the rates from New York to New Orleans are determined by the ocean lines of transportation and are very low. The rail lines between New York and New Orleans, if they desire
121 to compete for that business, must meet the low rates made by the steamship lines, which leave little, perhaps no profit, but they may compete with the steamship lines at these rates without losing any money, for the reasons above explained. It is evidently to the interest of the public that the railroads should remain in active competition with the steamship lines, otherwise the steamship lines would have a monopoly of the business, and no doubt would make higher charges than they now do. Again, the rates from New York to Montgomery are determined by the ocean rates to New Orleans, plus water rates to Montgomery, or plus the rates of short railroad transportation from New Orleans to Montgomery; the rates from New York to Montgomery via ocean lines are, therefore, higher than the rate to New Orleans. The rail lines from New York to Montgomery carrying business in competition with the low ocean rates, adopt the Montgomery rate made by the ocean competition, and thus it occurs that the rates from New York to Montgomery via rail lines are higher than from New York to New Orleans, although the distance is shorter. The rates are adjusted according to the circumstances and conditions of competition, and these are different at New Orleans from what they are at Montgomery.

Among the conditions regulating rates, a very important one is the difference of cost of transportation of various classes of freight carried under varying conditions. It is well known that it costs less per ton per mile to carry heavy articles of freight, such as coal, iron, etc., of which a greater number of tons can be loaded or a car, than to carry lighter articles, such as furniture, silk, etc. The cost of transportation is one of the conditions according to which the rates of transportation are made higher on the lighter than on the heavier goods for the same weight of goods.

Again, there is a difference in the cost between local and through freight, which is one of the conditions regulating railroad transportation rates. The extent of the great difference in the cost of local and through freight, so important a factor in controlling the adjustment of rates, cannot be understood except by explaining the practical methods of railroad operation as regards these two classes of freight, from which this difference in cost necessarily arises.

122 In handling through business in full-loaded cars on trains consisting of the maximum number of cars, passing from one end of the road, or a division of a road, to the other, the locomotive is taxed to its full capacity, and all other train expenses are reduced to a minimum per unit of work done. On a local train, carrying freight which is to be distributed between the several stations on the road, the cars can only be partially loaded, and fewer cars can be carried on a train on account of the necessity of switching and distributing cars at each station, so that the work done by a local train, as measured by the tons carried per mile, is comparatively small, while the expense of running a through train per mile is about the same as that of a local train. Besides, there is the expense of keeping up so many local stations, and employing many agents not required for through business. Take, for example, a road of 100 miles in length—a through train, consisting of twenty cars, each carrying ten tons of freight, the number of ton miles carried by this train over the whole length of road would be 10 x 20 x 100, or 20,000 ton miles; that is to say, equal to one ton carried 20,000 miles, or 20,000 tons carried one mile. On the other hand, take a local train, consisting, say, of fifteen cars, each car half loaded, say with five tons, destined to the several stations on the road, in equal proportions. The train, as it unloads at each station, proceeds with a less load until it arrives at its final destination. The work done by the train is, therefore, constantly reduced as it proceeds. It started with seventy-five tons of freight, and, supposing it distributes it between the various stations in equal amounts, the work done by the train is only equal to 37½ tons carried 100 miles, equal to one ton carried 3,750 miles; while the through train carried 20,000 ton miles or 5.3 times as much. The relative expense per ton per mile of doing through and local business would be, under the circumstances named, about in the same proportion as the work performed, that is, as 1 to 5.3. The conditions and circumstances under which local business is to be done are different on every road, depending upon the amount of business and the manner in which it is distributed among the stations. I have only endeavored to explain, in a general way, the conditions and circumstances under which local and through business has to be transacted.

123 In my testimony before the Interstate Commerce Commission, in the case of Thurber *vs.* various trunk lines (known as the car-load and less than car-load case), I gave in detail the result of a careful examination of this question, based upon actual observations made on the Pennsylvania railroad, and found that under the conditions of the distribution of local traffic on the

Pennsylvania railroad, compared with the cost of through traffic in full-loaded cars and full train-loads, the relative cost of the through to the local traffic was as one to twelve. This testimony I herewith confirm. It will appear from it that the rates on through traffic passing over the whole length of a road, or a division of a road, may be less than the cost of local traffic over a shorter distance if the conditions and circumstances governed by the cost of transportation are taken into consideration.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 5. At points where competition exists between several railroad carriers, or between railroad and water carriers, the carrier which makes the lowest rates determines the rates that can be charged by its competitors. The railroad tariffs of this country are everywhere influenced by competition between carriers and especially by competition with water carriers. The railroad traffic managers can only study the force of the competition, and adjust the rates accordingly. Even where a number of competitors agree upon certain rates, all of the competitive conditions that govern such rates are first taken into consideration. Thus, for example, the different railroad lines between New York and New Orleans may agree upon the same rates, but such have to be adapted to the conditions of the existing competition with water lines. The same is the case at Savannah, Charleston, Augusta, Atlanta, etc. The competitive influences are not only felt at points where direct competition exists as at the points named, but also at local points where there is no direct competition. Thus, take any local station between Atlanta and Augusta. The rates to such local stations are based upon the low competitive rates made to the nearest competitive point, say from New York to Augusta, or from Cincinnati to Atlanta, and the higher local rates from Augusta or Atlanta
124 to the local stations are added, so that the shipment to a local station enjoys the effect of competition from New York to Atlanta and Augusta, that is, over the greatest part of the distance over which the goods are shipped.

Int. 6. Please explain fully how, or in what respect, the existence of competition between markets, affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. Competition between markets influence the railroad carriers in the same manner and to the same extent as the competition between carriers, with this difference: that no agreement between carriers could do away with the effect of such competition. For example, the lower rates of transportation on the Erie canal and lakes from New York and Chicago would give Chicago a monopoly of the business if similar low rates were not made between New York and other interior points competing with Chicago, although these interior points have not the advantage of water transportation. If rates are reduced between New York and Chicago, they must necessarily be reduced between New York and Cincinnati, Indianapolis, St. Louis, etc., to enable merchants in

those cities to compete with Chicago merchants, and to secure business for the roads that run from these points to New York. In order to enable manufacturers in the West and manufacturers in the East to compete with each other in the southern markets, it is necessary that the rail lines from the West to the South should adjust their rates to meet the competition of the rates from New York to the same points, and *vice versa*. For example: If Cincinnati manufacturers are to compete with New York manufacturers in the Atlanta market, the rates from Cincinnati to Atlanta must approximate the rates from New York to Atlanta, due consideration being given to the possible difference in the cost of production. If not fairly adjusted, the Cincinnati manufacturers cannot compete with the New York manufacturers and the railroad lines from Cincinnati have no business. Hence, the railroads adjust the rates to meet the competition in the market as far as they may be able to do so. This competition is one of the controlling conditions and circumstances regulating transportation rates.

ALBERT FINK.

125 *Testimony of M. H. Smith, Louisville, Ky.*

Int. 1. State your name, age, residence and occupation.

Ans. to Int. 1. M. H. Smith; 55 years of age; residence, Louisville, Ky.; occupation, president of the Louisville and Nashville Railroad Company.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. Since 1860. Have been telegraph operator, station agent, superintendent's clerk, train-dispatcher, general agent, master of transportation, general freight agent, traffic manager, vice-president and president.

Int. 3. State whether or not the phrase, "under substantially similar circumstances and conditions," as connected with the railroad transportation of passengers and property in the United States, was, at and prior to February 4th, 1887, a railroad-traffic term.

Ans. to Int. 3. The phrase, "under substantially similar circumstances and conditions," was not in express terms a railroad-traffic phrase prior to the act of February 4th, 1887, or rather prior to the discussion in Congress, which led up to the passage of that act, in which the term was, in its present shape, incorporated.

Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States.

Ans. to Int. 4. I have stated that the expression, so far as I was advised, was not generally used prior to the act of February, 1887, which renders an answer to this unnecessary.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 5. Competition between carriers affects the circum-

stances and conditions, not with relation to the actual physical movement of the property, but with respect to the revenue that may be secured for such movement. It is clear that the compensation
126 that one carrier may secure for transportation, in competition with other carriers, is fixed by the lowest rate which any one of such carriers may perform the service for. This is true in competition of carriers by rail with those by water, and equally true as between two or more carriers by rail competing with each other. The effect of competition upon rates that may be charged for the service of transportation is not confined to the direct competition of carriers between two points common to each. In other words, it is frequently the case that the transportation of property, and the rates that may be charged thereon, between points on one line of railway, are controlled by the rates that may be charged by other carriers from other points to the same point of destination, even though the points of origin of such traffic are not the same. For instance, there is but one railway line carrying freights or passengers from Nashville to Birmingham, Ala., and yet the competition at Birmingham, with carriers transporting similar freights, whether manufactured articles, grain or other food products similar to those shipped from Nashville, is so great as to fix the rates that may be secured by the line for transporting such articles from Nashville to Birmingham, and reducing the revenue received therefor below what would otherwise be a just and reasonable charge.

Similarly, there is but one carrier competiting for transportation of freights from Nashville, Tenn., to Chattanooga. Tenn., but the competition at Chattanooga, with carriers transporting similar articles of produce or manufacture from Cincinnati, O., Louisville, Ky., Cario, Ill., and Memphis, Tenn., and numerous other points, is so active that it controls the rates, which the line from Nashville to Chattanooga can secure for the transportation performed by it. Therefore the service to the citizens of Chattanooga, performed by the line from Nashville, is of less value than it would be if the competition with lines reaching other sections, with similar transportation for sale, did not exist. The value of the service being thus controlled, it follows that the rates that may be secured are less than otherwise would be just and reasonable.

On the other hand, transportation from Nashville to a point where such competition with carriers does not exist, must by the same rule possess a greater value than to Chattanooga, and therefore the fair and reasonable compensation for the service in that
127 case may be greater than for the service performed for Chattanooga. While this is true, it will be seen that the competition between carriers is so far-reaching in its effects as to materially reduce the rates that may be secured for transportation to local stations, where no direct competition between carriers exists. For illustration, the town of Franklin, Ky., is on the line of the Louisville and Nashville railroad, between Louisville and Nashville, twenty-one miles south of Bowling Green, Ky., and about fifty miles north of Nashville. There is but one rail carrier between Louisville and Bowling Green, and but one rail carrier be-

tween Louisville and Nashville. At Bowling Green competition is met with steamers running between Bowling Green and Evansville, Ind., a point on the Ohio river. At Nashville competition is met with steamers plying to Evansville, Ind., Paducah, Ky., and Cario, Ills., connecting at those points with steamers and railroads reaching points north, south, east and west. Competition is also met with rail lines from Cario, St. Louis, Chicago, Kansas City, &c. The cheap water transportation and the active competition of carriers, anxious to secure traffic to and from sections reached by them, in competition with carriers reaching other sections, materially reduces the rates of transportation that could otherwise be justly secured at Nashville. The water competition at Bowling Green also tends to reduce the rates that can be secured at that point. It is apparent, therefore, that while Franklin is local to the line of the Louisville and Nashville railroad, the rates that may be charged for service performed for the citizens of Franklin and adjacent country, cannot be higher than the rates to Nashville plus the relatively short haul from that point to Franklin, or the rates to Bowling Green plus the low local rates from Bowling Green to Franklin. The value of the service to Franklin on the other hand is equal to the value of the service to Nashville plus the service from Nashville to Franklin, and the rates may be under such conditions, and in fact are greater from Louisville to Franklin than from Louisville to Nashville, without any unjust discrimination against Franklin. But it does not follow that the local rates charged by rail carriers are maintained as high as the actual value of the service performed, fixed by the rule just laid down. The competition between carriers for the through or competitive traffic, passing in this instance from Louisville and points beyond, to Nashville and
128 points beyond, inures to the benefit of the local stations. The net revenues secured on through or competitive traffic reduce by that amount the charges that would otherwise be borne entirely by traffic local to the line, and this enables the railway company to handle its local traffic at lower rates than it would otherwise be in a position to do; so that, as a matter of fact, the local rates charged by the Louisville and Nashville Railroad Company from Louisville, Ky., to Franklin, Ky., while somewhat higher than the rates forced by water and rail competition from Louisville to Nashville are in many cases much lower than the rates from Louisville to Nashville added to the rates from Nashville to Franklin, and in no case exceed such combination of the through and local rate.

Int. 6. Please explain fully how, or in what respect, the existence of competition between markets affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. The existence of competition between markets is closely related to the competition between carriers, which I have just illustrated, and includes another term now and for many years in general use in the consideration of transportation questions, namely, the competition of product with product, which has been

stated to be "the most potent factor of competition." This is not confined to the competition of the product of one city or one section of the country with the same product offered for sale at another city, or in another section, but extends to the competition of one product with other products which may be used for similar purposes, and, therefore, substituted for the one product which a designated carrier may have the opportunity of transporting. During the past several years much thought has been devoted to developing uses for cotton seed, or the products of cotton seed. It is clearly to the interest of the southern territory, largely dependent upon the production of cotton, to develop every possible use thereof, and in doing this it has been found that certain products of cotton seed are valuable as feed for live stock, and they, therefore, come into competition with grain, hay, etc., which would otherwise be brought from the grain and hay growing sections of the West.

The same is true with respect to the use of certain products of cotton seed for fertilizing purposes, which can be and are
129 substituted for fertilizers manufactured from wholly different materials in the East or West. Consideration to all of which circumstances has to be given by traffic officers when these severely complicated circumstances are presented for solution.

To illustrate further: Several years ago certain lines of the Louisville and Nashville railroad, in Kentucky, were extended to reach extensive deposits of coal not previously accessible. These coal deposits, though intrinsically valuable, up to that time were wholly undeveloped, and without the transportation were, and would have continued to be, practically valueless. The development began by parties owning them, first in a small way, gradually increasing as markets were found for the output. After a few years it was found that these markets were limited, and that the operations then begun could not be successfully continued unless larger sales could be made. The use of coal as a domestic fuel in many parts of Kentucky was, at that time, a new thing, dependence being largely placed upon wood for that purpose. To induce the use of coal, and to secure the transportation thereof as against wood, which furnished but little if any transportation, the rates which had been previously fixed for the transportation of coal to local stations were materially reduced, in many cases being made one-half of what they had previously been; the result of competition between two different products, coal and wood, used, however, for the same purpose.

This experience was not exceptionable, but may be said to follow to a greater or less extent similar developments throughout the coal-producing sections of the South.

I can illustrate also from the development I have just referred to, the effect of competition of product with product, produced, however, in different sections of the country. For many years the city of Louisville has been a large consuming and distributing point for Pittsburg coal. The extensive mining of bituminous coal in the Pittsburg district produced not only sufficient for a large local con-

sumption, but a surplus which the owners of those mines were willing to place in distant markets at low prices. Large fleets of barges were prepared and placed in the service, coal being loaded thereon and floated down the Ohio river at probably as low cost as transportation is obtained for in any section of the country.
130 Agencies for the sale and distribution of this coal have been established for many years in the city of Louisville, giving consumers there a good fuel at a reasonable price. The owners and operators of coal properties in Kentucky, on the line of the Louisville and Nashville and other railroads, as their development increased, found a necessity for reaching a large consuming market at which their surplus output could be placed, even though prices secured were low. It is apparent that if such operators could secure in such a market prices that represented the actual cost of production of such coal and continue the operation of their properties to their full capacity, it would be to their interest to do so, and thereby reduce the average cost of the total production. This would also benefit the consumers at other points, enabling coal operators to sell coal at such points at lower prices, owing to the reduced cost of the output. The Pittsburg coal was of high quality, and the consumers had for years accustomed themselves to the use thereof, and looked with some prejudice upon coals known to be in some respects inferior. These circumstances fixed the price at which the coal produced in Kentucky could be sold on the Louisville market. The railways were compelled either to decline to provide access to the Louisville market or transport it at such rates as the existing competition would permit. It offered them new traffic, and it was apparent that their interests and the interests of all concerned, including, in fact, all consumers of Kentucky coals as well as the producers thereof, were to be promoted by the performance of such service, even though the revenue received should not, in some cases, exceed the cost of the service, and this cost of service, under such circumstances and conditions, need not to be the average cost over the entire line, but might, if necessity compelled, be limited to the additional cost which the transportation of such surplus tonnage might impose upon the carriers. The circumstances and conditions of the transportation, therefore, of coal to the city of Louisville, under the competition described, it is apparent, are very different from the circumstances and conditions of the transportation to other points on the line of such railways in Kentucky remote from river competition, even though the transportation to such point was for a shorter distance and over the same line, and in the same direction. Competition of product with pro-
131 duct, in other words, created circumstances and conditions which fixed the value of the service to be performed by the carriers to Louisville. Now that these circumstances and conditions did not bring down the value of the service at an intermediate point between the mines and Louisville to the low basis at Louisville must be apparent. Take, for instance, the town of Lebanon, Ky., which is a local point on the Knoxville division of the Louisville and Nashville railroad, lying between the mines on that division

and the city of Louisville, being distant from Louisville about sixty-five miles and from the mines 95 to 140 miles. If, as shown, and as has been proven by actual experience the cost of producing coal and the price at which coals could be, and are sold from the Kentucky mines, is reduced by extending the markets, it is apparent that the consumers at Lebanon, as at other points, are to that extent benefited. It must be conceded that the Louisville and Nashville Railroad Company has the right to charge a fair and reasonable rate for the transportation of coal from the mines on its line to that point, and that this rate may be greater than the compensation received for the transportation to Louisville. Prior to the opening of the mines in Kentucky a consumer of coal at Lebanon paid the price of the coal at Louisville, plus the rate of transportation from Louisville to Lebanon. The consumer at Lebanon secures the benefit of the competition of the different coals on the Louisville market. If he purchases in Louisville, he has the benefit of the low price brought about by the severe competition at that point, and if he purchases at the Kentucky mines he has the benefit of the reduced price at which those mines are enabled to sell by extension of their trade. The competition between the two competing markets, namely, the Pittsburg district and the Kentucky district, thus affects and, in fact, may be said to control the circumstances and conditions under which coal is transported to Louisville. Similar competition between markets or between products similarly controls the circumstances and conditions of transportation wherever such competition is met with, and is just as effective in controlling or creating the circumstances under which transportation may be conducted, when the competition is by means of carriers by rail, as if it were competition secured through carriers by water.

M. H. SMITH.

132 *Testimony of James F. Goddard, of New York.*

Int. 1. State your name, age, residence and occupation?

Ans. — Int. 1. Name, James F. Goddard. Age, fifty years. Residence, New York. Occupation, commissioner Trunk Line Association.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. Have been connected with the traffic department of the railroad service in the United States from 1868 to date—first, as clerk in general freight office; afterward, assistant general freight agent, Chicago, Burlington & Quincy railroad; gen'l freight agent of the Hannbial & St. Joseph R. R.; then successively general freight agent, traffic manager, general manager and vice-president of the Atchison, Topeka & Santa Fé Railroad Company; then commissioner of the Western Passenger Association, and of the Trunk Line Association.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions" as connected with the railroad

transportation of passengers and property in the United States was, at, and prior to February 4th, 1887, a railroad-traffic term?

Ans. to Int. 3. I am not aware that the exact term "under substantially similar circumstances and conditions" was in general use previous to the discussions which resulted in an act to regulate commerce, passed February 4th, 1887, but the phrase "upon like condition and under similar circumstances" was used in the Kansas statute creating a board of railroad commissioners and defining their duties, approved March 6th, 1883.

Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States?

Ans. to Int. 4. The phrase referred to in my answer to question 3 has been generally understood to apply to the conditions governing the making of rates for the transportation of freight. Assuming that the carrier has a right to charge a sufficient sum to compensate him for the service rendered, it is the constant study of the carrier to so distribute its charges for such service as to result
133 in the least possible burden upon the public and at the same time foster and increase the industries which are tributary to its line. This principle enters into rate-making and may be stated as one of the reasons why there is a greater difference generally existing between the rates of transportation on dry goods and those on brick and stone than would be represented by the difference in the cost of the service to the carrier. If the rates for transportation were made with a view to realizing for the carrier the same percentage of profit for the transportations of all classes and commodities of freight, while the problem of rate-making would be simplified, much of the commerce of the country would cease. This is especially true of those articles and commodities which are of comparatively low value, those which are handled on small commercial margins and those which approach the nearest to the actual necessities of life.

The competition between the carriers also brings about dissimilar conditions which it has been understood were contemplated in the use of the phrase above referred to. For illustration: A rate of 25 cents per 100 pounds for the transportation of coal from New York to Chicago would undoubtedly be considered by any court or jury as a reasonable rate *per se;* but, by reason of the fact that the canal and lake carriers, because of their much lesser expense of transportation, transport this coal for, say 15 cents per 100 pounds, the question is immediately presented whether or not the railroads can carry this freight, considered by itself, at a less rate than 25 cents per 100 lbs., which they must do or retire from the business of transporting coal.

The competition of markets also creates dissimilar conditions, and ones which are understood to have been included in the phrase first referred to, as, for example, stoves are manufactured largely at Albany, Troy, Rochester, Buffalo and Chicago. A rate for the transportation of stoves from Albany to St. Louis which would be admittedly a reasonably low rate *per se,* and which rate would be charged

except for the competition of manufacturers at the other points mentioned, may by reason of the rates made for the transportation of stoves from some one or more of those points be reduced; otherwise the manufacturers at Albany might be forced to retire from the field.

In considering how far reductions can be made, the question of the cost of the service performed must be kept in view. The average cost of operating the principal lines of railroad may be stated at from 60 to 70 per cent. In this cost are included the items of fixed charges, namely, such charges as do not vary with the volume of traffic, such as interest upon capital invested, rentals, etc.
134 There are also included other charges which vary but slightly, if at all, with the volume of business, such as the general and legal expenses, those for maintenance of track, for bridges, buildings, etc. These latter expenses may be estimated to equal approximately 20 per cent.: so that it may be true that certain commodities may be transported at a material reduction from established rates and yet pay a slight profit to the carrier.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted?

Ans. to Int. 5. As a general rule it may be stated that between points which are competitive between several carriers, whether all-rail, rail and water combined, or only by water, the lowest rate made by any carrier fixes the measure for all. This competition has had much to do with the establishment of rates not only as between points which are directly competitive, but its influence reaches what in any other light might be considered purely local traffic. For instance, the rate from New York to station "A" on the New York Central line, twenty miles east of Buffalo, could not exceed the rate, New York to Buffalo, plus the rate from Buffalo to said station "A;" and yet, by reason of the competition to Buffalo, the sum of these rates might force a lower than the regular rate from New York to station "A." The competition between New York and Buffalo is also quite different during the season of navigation by canal from that existing during the rest of the year. All these conditions must have due considerations in determining the rates.

Int. 6. Please explain fully how, or in what respect the existence of competition between markets affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. Competition between markets also has a powerful influence in the determination of rates. For illustration, take the item of stoves, to which reference is made in my answer to question 4: The rates of transportation from the different points of manufacture should approximate an equitable relation to each other. A material reduction in the rate on this commodity from one of the points named to common territory generally forces a corresponding reduction from other points. So, in the transportation of mineral and other products indigenous to certain localities. The ability to transport these articles frequently depends upon the ability of the carrier to transport them at rates reduced greatly below what might

be considered a fair average of rates; particularly is this true
135 in the transportation of fuel, building materials, etc., which come nearest to the public necessities. Were not this principle recognized, the commerce of the country would be diminished and localized, and the benefits resulting from legitimate competition materially lessened.

JAMES F. GODDARD.

Testimony of W. H. Newman, of Chicago, Ill.

Int. 1. State your name, age, residence and occupation.

Ans. to Int. 1. Name, William H. Newman; age, 44 years; residence, Chicago, Ill.; occupation, third vice-president of the Chicago & Northwestern Railway Company.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. I have been connected with the traffic department of railroad service for twenty-three years. From 1869 to 1872 as station agent of the Texas & Pacific railway; from 1872 to 1883 in the several positions of general freight agent, general passenger agent and traffic manager of the Texas & Pacific railway; from 1883 to 1885 as traffic manager of the lines in Texas and Louisiana of what was commonly termed the Southwestern system, viz: Missouri, Kansas & Texas, International & Great Northern, Galveston, Houston & Henderson, East Line and Red River, and Texas & Pacific; from 1885 to 1887 as traffic manager of the Missouri Pacific railway; from 1887 to 1889 as third vice-president of the Missouri Pacific railway; since November, 1889, and now, third vice-president of the Chicago & Northwestern Railway Company.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions" as connected with the railroad transportation of passengers and property in the United States was, at, and prior to February 4th, 1887, a railroad-traffic term.

Ans. to Int. 3. I do not understand that the phrase "under substantially similar circumstances and conditions" as connected
136 with the railway transportation of passengers and property in the United States was generally used by railway-traffic people prior to the interstate commerce law in February, 1887, but since then it has been in general use.

Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States.

Ans. to Int. 4. There is so much to consider in determining what are substantially similar circumstances and conditions as connected with the railway transportation of passengers and freight, that it is difficult to designate what may be generally understood by those connected with the traffic department of railway service as the correct and full definition of the term. The character and quantity of the traffic to be moved, cost of the service, geographical situation of the points between which the traffic is carried as affecting com-

petition between the carriers and between competing markets, kind of equipment to be provided, manner of handling as to speed of trains, etc., are some of the many things which have bearing on this.

This qualifying term was wisely inserted in the interstate commerce act, and presumably for the purpose of allowing the carriers, in the adjustment of tariffs, liberty to deviate from fixed and rigid rules in making rates, so that competition between carriers may be allowed to do its perfect work and adjustments made to fit the conditions surrounding the particular traffic involved.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 5. At points where competition exists, as it always exists where there are two or more carriers seeking business to or from common points or common territory, many elements enter into that competition that may not only affect but may alter or absolutely control the circumstances and conditions under which
137 the transportation of property is conducted. Distance, that is, rail mileage, while not dominating, must and does have a very important bearing in determining rates, hence the "short line" or shortest rail route between the common points or the common territory, all else being equal, fixes the maximum rate that can be exacted by any of the rail carriers competing for the business in question. As a rule it does not cost a "short line" to carry a ton of freight or a passenger one mile any more than it costs the long line, and on that basis, if none other, the short line equitably claims this rate-fixing authority. These elements being acknowledged, it naturally follows that the long line between given points cannot charge more than the short line if it wishes to carry any appreciable proportion of the business. Water routes, or routes partly of water and partly rail, are potent and dominating in determining a rate as against an all-rail route and have the power, and use it as well, to fix maxima beyond which the all-rail routes cannot go. The all-rail routes, let them be long or short lines, cannot ignore the water routes, but have to meet their rates or go out of that part of the business that is under the influence of the water-route rate. This statement must be accepted as an axiom, and while this is the case it will be seen that all the rates on the business between the common points in question are fixed and cannot (without combination or agreement between the rail and water routes) be changed by the rail lines, hence this fixing of the rates between termini leaves the intermediate points' rates to be adjusted by the roads reaching such points, and as they are not controlled by the terminal routes it is clear that competition between carriers does not affect and alter the circumstances and conditions that surround and control strictly competitive business. The law to regulate interstate commerce has forced the carriers to make rates for groups of stations or zones of territory, and this helps to prove that competition affects the circumstances and conditions under which the transportation of property is conducted, for had it not been for this interstate law

this grouping of stations or fixing of zones would not have been in such general use. It would be against the public good to prevent the long line from competing with the short line, or the all-
138 rail routes from competing with the water routes, and so long as this is the case so long must we concede that the business done between competing points is done under very dissimilar circumstances than those that are connected with non-competitive traffic.

Int. 6. Please explain fully how, or in what respect, the existence of competition between markets affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. Competition between markets affects the circumstances and conditions under which the transportation of property is conducted in various ways. For instance, the prices of grain are regulated and fixed in every portion of this country by the selling value in the markets of the old world. We must find a market for the surplus we grow. For years we have grown of grain largely more than we can use, and it is to the interest of the farmer and every one else that this surplus should be sent out of the country. Such as is exported has to compete with the grain of Russia, Argentine and India, and that we send from Kansas and Nebraska must be gotten to, say Liverpool, so that it can be sold in that market at the same price as grain grown in Illinois and Indiana, therefore, the roads running from points west of the Missouri river to Chicago or St. Louis, have to accept a rate that differs largely from what the rate would be if the value of the grain they carry was fixed by the price it would sell for in the Southern and Western States if the entire surplus crop in Nebraska and Kansas could be consumed in the South and in the States west of the Mississippi river. Again, the makers of agricultural implements in Ohio, Indiana and Michigan, compete in the grain-fields and on the farms in Nebraska, Kansas, Missouri and Texas, with like manufacturers in Illinois and Wisconsin. Unless the railroads from Illinois and Wisconsin can meet the rates made by the railroads from Michigan, Ohio and Indiana, the Wisconsin and Illinois manufacturers would be deprived of a business which would contribute a large tonnage to the roads of those States, and while this traffic might pay but a low rate per ton per mile for its carriage,
139 still it would pay a little more than the actual cost of the service, and the profit, small though it is, helps in supporting other industries on the Wisconsin and Illinois roads and in developing the country to which those roads afford transportation facilities. St. Louis competes with Chicago for the business of the Western States, Louisville with Cincinnati for that of the South, and so it is with many other points; and hence the rates from the several competing places cannot vary very largely. The rate fixed from the nearest point to the common market usually fixes the rate from the most distant competing point to that market. The rail lines between Chicago and St. Paul or Minneapolis, cannot, in adjusting their tariffs on business moved between these cities, consider only what will afford a reasonable compensation for the service ren-

dered, but must be governed largely by the rates which are fixed by the combined rail and water routes through Lake Superior ports and by the Canadian railways on similar traffic moved by these routes between St. Paul and Minneapolis and the Atlantic seaboard cities, so that the shippers and manufacturers at Chicago may be placed on a fair basis for competing with those in the eastern cities, and the consumers and producers of the Northwest may have facilities for reaching all of the markets their geographical situation entitles them to. This competition is not confined to the points directly reached by all of the competing carriers. The stations or territory local to each of them are more or less affected by the rates to the common points. In some cases where competition is maintained with water routes more is charged at interior points than can be obtained at the point of competition, and if the rates to the points directly competitive are such as to produce some profit, however slight, the non-competitive points are likely to receive an indirect benefit therefrom. While the competitive points have a larger and more direct benefit, the interior points may have no grounds for complaint in such cases, provided the rates they are charged are in themselves just and reasonable, even though the effect be that in some cases more is charged for a short than for a long haul over the same line in the same direction.

W. H. NEWMAN.

140 *Testimony of J. C. Stubbs, of San Francisco, Cal.*

Int. 1. State your name, age, residence and occupation.

Ans. to Int. 1. Name, J. C. Stubbs; forty-five years; San Francisco; third vice-president Southern Pacific Company.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. About 23 years; clerk freight department Pittsburg, Cincinnati & St. Louis R'y; chief clerk freight department, assistant general freight agent, general freight agent, freight-traffic manager Central Pacific Railroad Co.; general traffic manager Southern Pacific Co.; second vice-president Chicago, Milwaukee & St. Paul Railroad Co.; fourth and third vice-presidents, respectively, Southern Pacific Co.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions," as connected with the railroad transportation of passengers and property in the United States was, at, and prior to February 4th, 1887, a railroad-traffic term.

Ans. to Int. 3. The idea or principle expressed by the phrase, when used in relation to transportation, was always recognized and employed by railroad-traffic men. If not this term, words expressing the same thing have been common with the profession. Its common use at present is but a more general recognition of an elementary principle, regulating the charges for transportation, which has been known to and observed by railroad managers from

the beginning. The more general recognition probably arises from the prominence given to the phrase by the interstate commerce law. Railroad men understand, and have always understood, that its provisions relative to discrimination in rates for transportation was simply an enactment of the common law, and a rule of common business sense also. The difference, if any, between now and then is that traffic men have substituted the concise language of
141 the law-maker for their own probably less precise words. In his report for the year 1877–'8, the commissioner of transportation for the State of California, under head of "Unjust Discrimination," on page 61, uses this expression :

"Common carriers should serve all their customers alike under like circumstances."

The rule that "articles not specifically provided for shall take the rate provided for analogous articles," has been common to all freight classifications of different carriers in different States—the term "analogous" as therein used meaning substantially similar in respect to quantity, bulk, weight, value, direction of movement, liability to damage, etc., all being conditions affecting the determination of the rate to be charged for transportation.

Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States.

Ans. to Int. 4. By traffic men it is used with reference to conditions governing the cost of, and to the circumstances controlling the movement of persons and property, which determine the charge for transportation.

I do not know a better way to explain the meaning of the term as employed by railroad-traffic men, than by giving examples of some of the influences which created differences in circumstances and conditions, and illustrations of how and why they affect transportation charges; the reasons why different rates of charge are made for similar service when the circumstances and conditions are not substantially similar. It will make the answer long, but it will be the quickest way for me to give it.

Conditions Governing "Cost."

The most important and perplexing one is variableness and consequent impossibility of determining it in advance so that it can be used as a factor in establishing a fixed charge or schedule of charges.

142 While it is true that a considerable portion of the expense incident to operation is fixed or ascertainable, the larger portion depends upon unknown conditions—such as characteristics of the season; the effect of the natural elements; the kind and degree of competition to be encountered; the volume, class and direction of traffic. In the case of long-established roads serving well-settled districts whose industries have developed into a reasonable degree of permanency, these unknown quantities may be in some measure estimated by averaging the results of past seasons; but with com-

paratively new roads running through a territory whose industries are but partially developed, they can only be approximated by analogy with other roads and other territories. The tariff of charges must be fixed in advance of doing the work, and, of course, must as nearly as possible provide for the total expense, together with interest or profit. Therefore, it must be fixed at the maximum rate, as it can only have regard to the known and reasonably probable conditions affecting and likely to influence the earnings and expenses. As the unknown conditions and circumstances affecting the business of the road develop in the course of operation, the charges must be accommodated thereto, so that even in the case of the long-established roads, a tariff of charges cannot be made in advance and arbitrarily applied for any considerable period without injury to both public and carriers.

For the purpose of illustration, I quote from the report of the board of commissioners of transportation for the State of California, in their annual report to the legislature, December, 1877, page 13, as follows:

"If it were practical to ascertain the cost to the railroad company of transporting any particular lot of freight, the question of regulating charges for transportation would be much simplified, for it would only remain to be determined whether a uniform profit should be allowed on the carriage of all goods, or one that should vary in accordance with classification. But it is not possible
143 to ascertain the actual cost of movement in advance of the close of the season. So large a proportion of the cost of managing and operating a railroad consists of fixed expenses, which are, necessarily, the same in amount, without reference to the volume of business transacted, that the actual additional cost of transportation of any particular lot of freight over that of running the train without it, is scarcely appreciable; it amounts to little more than that of handling the goods. The 'cost of transportation' in this sense cannot be made the basis, nor the profit on it the measure of a proper charge for carriage, because each parcel of freight should also bear its due proportion of the necessary general expenses of the road. This it is impossible to ascertain without considering the whole volume of business—a thing liable to continual fluctuation, and impossible to be known in advance. 'Cost of transportation,' therefore, in the sense above indicated, simply fixes the point below which railroad companies cannot transport without actual loss. It regulates only the minimum of charge."

From this and what follows, it will appear that the "cost" of transportation to the carrier is a complex and variable element.

The actual cost (total cost) per unit of service to a railroad company, of handling all its traffic, is greater than the cost per unit of service (additional cost) of moving a given train or given party of persons, or a given lot of freight, and this "additional" cost of movement in given cases will vary under different conditions and circumstances. The reason for the difference between this "actual cost" and "additional cost" is found in the fact that perhaps not more than one-third of the total expense of the carrier is affected by the

volume of traffic. It is estimated that from thirty-three and one-third to forty per cent. of the total expenses is fixed. The remainder represents what is commonly termed operating expense, but a portion of that is unaffected by the volume of traffic. To illustrate:

The census for 1880 shows that the annual interest, maintenance and operation charges paid at that time by the railroads of
144 the United States amounted to about the sum of $542,000,000, classified as follows:

	Amount.	Per cent.
1. Interest paid on debt	$187,250,826	34.6
2. General officers, legal expenses, taxes, etc.	59,541,684	11.0
3. Maintenance of bridges, buildings and way	85,722,748	15.8
4. Maintenance of engines and cars	54,985,340	10.1
5. Conducting transportation	88,230,621	16.3
6. Motive power, fuel, enginemen, etc.	66,219,576	12.2
Total charges paid	$541,950,795	100.0

It appears from these figures that the fixed expenses of the average railroad in the United States, which are a necessary charge on whatever traffic is carried, are:

1. Interest	34.6	per cent.
2. General expenses, taxes, etc.	11.0	" "
3. Maintenance of way	15.8	" "
4. A portion of the maintenance of rolling stock, which, if we assume to be one-half, will be	5.05	" "
Making a total of	66.45	per cent.

On the other hand, we have the remaining items which are directly affected by and vary with the particular kind *of* quantity of the traffic, namely:

Conducting transportation	16.3	per cent.
Motive power	12.2	" "
And say one-half maintenance of rolling stock	5.05	" "
Making a total of	33.55	per cent.

It may therefore be said in very general terms, but which are sufficiently accurate to illustrate the principle, that 66.45 per cent., or, say two-thirds of the expenses of the railroad are unaffected, or affected in a slight degree, by the quantity of the traffic. With one train or ten trains a day, two-thirds of the expenses would remain without great change. By the increase of traffic the remaining one-third of the expense would be increased, though still not in proportion to the increase of traffic, as it costs no more for the wages of trainmen, for instance, whether the cars are half empty or all loaded to their full capacity.

The "actual cost," which includes all items of expense,
145 those that are fixed and those that are variable, is, therefore, currently an indeterminate quantity, of no value in fixing rates.

The "additional cost," which represents those items that vary according to circumstances, may sometimes be approximated with respect to particular cases, but not always. For example: The cost of an additional train may be estimated with some approach to accuracy, but the cost of an additional car, or the difference in cost between an empty and a full car or a partially loaded and a full car, cannot be known or conjectured. Where the "additional cost" can be approximated, it represents only the minimum charge below which the carrier cannot go without loss. Hence, even the experienced railroad manager can adopt or observe no hard and fast rule by which to regulate rates of charge. Out of his experience and the experience of others, he may derive a rule by which to establish reasonable maxima for all classes of traffic, that is to say, he may establish a schedule of prices which will be reasonable under ordinary circumstances and conditions, those that are known or can be anticipated. Currently he may determine the minimum below which he cannot go without loss for particular cases, but between these limits he is and must be governed by the diverse circumstances and constantly changing conditions which affect the movement of the traffic. In determining these maxima, due regard is had for the peculiar characteristics of particular kinds and classes of property with reference to the cost of handling and movement and to amount of service performed (distance moved.) It costs more per ton to carry goods of great bulk and relatively light weight than it does to carry goods of ordinary weight and measurement, because the latter will load a car to its full-weight capacity, and the proportion of dead weight to load is at the minimum, while the former may load a car to less than half its weight capacity and the proportion of dead weight to load would be double or more than double that with ordinary freight.

It costs more to handle goods of extraordinary value and goods peculiarly susceptible to damage, or goods which by contact or
146 from any cause are damaging or destructive to other property, because the carrier is by law an insurer of the goods, and the risk he takes is an important element of cost.

It costs more to haul a ton of freight 100 miles than it does to haul it 50 miles; hence, the charge is greater in the one case than the other; but it costs less per unit of service, the ton mile, to haul 100 miles than to haul 50 miles, hence the longer-distance charge is based on a lower rate per ton per mile. The fixed expense is the same in both cases as are also the terminal expenses. The only increase of expense incident to the additional haul is the mere cost of traction and wear and tear to track and equipment, which is probably considerably less than 20 per cent. of the total. Important as these circumstances and conditions are as elements of cost, they can only govern the charges for traffic which is uninfluenced by others; what I shall call extraordinary conditions and circumstances of

greater force—those that determine the volume of business and thus directly affect the expense and profit of the carrier. For example, if business is offered to the carrier which for any cause will not bear the ordinary charge, the wide difference between actual cost and the "additional cost," as those terms have been defined above (see note) affords the carrier ample room for determining whether he will accept it at the rate it will bear.

NOTE.—These terms will hereafter be used with reference to the definition above given—that is to say, by "actual cost" is meant the total expense of the carrier, fixed and variable, whether applied to the entire business of the season or reduced to the unit of service, as, for example, the actual cost per unit of service for freight would be found by dividing the total expense chargeable to freight (which can only be approximated) by the total number of ton miles made during the season.

By "additional cost" is meant simply the additional expense incident to the movement of a particular lot of freight or moving it a greater distance without reference to any other expense or any other traffic.

If it will bear anything more than the "additional cost" as nearly as that can be determined at the time, manifestly it is his duty and interest to take it, because the excess over additional cost is profit. It is to the interest of the carrier to make this profit. It is his duty to promote the trade of the communities he serves when it can be done without loss. The increase of a carrier's net earnings is of public advantage, because the history of the trans-
147 portation interests of the country will prove that the increased profits of the carrier are sooner or later shared with the public by general reduction in rates of charge. The rate the traffic will bear is determined by the circumstances and conditions under which it is offered. Of these extraordinary conditions and circumstances, it may be said generally: that while they operate in different ways their effect upon the carrier's interest and the interest of the community is the same, differing, if at all, in degree only.

If the charges of the carrier are properly adjusted to these conditions and circumstances, they all increase the volume of traffic, which while it increases the aggregate expense and the aggregate profit of the carrier, also diminishes his average cost per unit of service, the ton mile, as the fixed and other expenses which are not affected by the increase in tonnage are spread over a greater number of ton miles. It also diminishes the carrier's rate of profit per ton mile, as on the increased traffic very much less than the ordinary rate of profit is obtained, which, of course, reduces the average for the whole traffic. The increased traffic of the carrier represents in most cases, if not all, enlarged commerce between the communities served by it, which represents greater production, larger consumption and added prosperity for those communities.

Some of the principal agencies, or influences, which create wide differences in circumstances and conditions affecting the movement of and charges for carrying persons and property, may be described

with their effect and the reasons for giving them that effect, under the following heads:

(1.) Volume of traffic in respect to direction.

(2.) Competition.

(3.) Relative volume in respect to other traffic, which perhaps will afford sufficient examples and illustrations.

(1.) Volume of traffic in respect to direction:

With some carriers the tonnage runs largely in one direction. In that case, the cars running in the direction of the traffic, are loaded, but many of them when running in the opposite direction, returning, are empty. It follows that for the tonnage carried in one direction, in excess of that carried in the opposite direction,
148 the carrier's service is practically doubled by having to return its trains without loads. It also follows that if loads can be obtained for these returning empty trains at anything above the "additional cost," that not only the actual cost per unit of service is reduced, but the carrier's net earnings are increased. But these conditions are not the same on all roads. For example:

For the greater part of its history, the traffic of the Central Pacific railroad has been chiefly west-bound, in the proportion of sixty (60) per cent. west-bound to forty (40) per cent. east-bound; that is to say, that for its through business (that interchanged at its eastern terminus with the Union Pacific) alone, one-third of the cars required to handle the west-bound freight were required to be hauled empty over the entire length of the main line, or for every sixty car-loads of freight handled west-bound twenty cars were required to be returned without a load. The traffic of the trunk lines between the Atlantic coast cities and Chicago and St. Louis has been more largely east-bound. This presents a case of dissimilarity in conditions as between different carriers, showing the impossibility of adopting a hard and fast rule to govern uniformly the respective charges for transportation of different carriers. In the case of the Central Pacific the surplus cereal products moved westward to San Francisco and thence were shipped to a foreign market; while the Pacific coast States and Territories, being without manufactories, and producing little besides wheat, fruits and ores, received the bulk of their supplies of merchandise and manufactured goods from the Eastern States, which were also moved westwardly. In the case of the trunk lines, little else than merchandise and manufactures move westward, while grain, cotton, tobacco (unmanufactured), packing-house products, articles included in the trade term "produce," live stock, all move eastward, not only for domestic consumption, but also for foreign export. A rule suited to the conditions affecting the traffic of the trunk lines would not have worked equitably if applied in respect to direction and class of tonnage on the Central Pacific; yet the conditions were similar in the respect
149 that both the trunk lines and the Central Pacific hauled a large number of empty cars. It must also be manifest that under such circumstances a rule to regulate the rates for west-bound traffic could not reasonably be applied to the rates for east-bound traffic; that in either of the cases mentioned, the respective carriers

could afford to augment the traffic in the direction their cars were going empty, by rates which they could not afford to offer in the opposite direction, because in the latter case they would have to haul two cars, one loaded, the other empty, for each car-load of increase, while in the former case they would not be required to haul a single additional car; the only added expense for each added car-load of freight would be the difference between hauling a loaded and an empty car. The circumstances were not substantially similar, hence a necessary and just discrimination in rates for what was apparently similar service. Peculiar conditions in the respect described enabled the Central Pacific to carry eastward a large tonnage of sugar which was marketed at points on the Missouri river and will be again referred to by way of illustration.

(2.) Competition:

This is probably the strongest influence affecting the charges for transportation, as it is in the regulation of prices for all other products of labor. It overrides all other considerations. With carriers, it may be encountered in the person of a rival contending for the carriage of the same goods, or it may be the contention of two producing territories for the same consuming market.

To illustrate:

(*a*.) The competition for the carriage of agricultural implements, manufactured in the States east of the Missouri river, to the Pacific coast, is one of carriers. These implements are not manufactured on the Pacific coast, but are brought wholly from the Eastern States and are the subject of competition by various transportation lines.

(*b*.) The competition encountered in the transportation of sugar, of which large quantities are shipped from California to the Missouri and Mississippi valleys, is from the Atlantic coast manufacture seeking the same market.

The first (*a*) is an example of what is commonly termed competition of carriers. The second (*b*), competition of markets.

In the first case, the question controlling the rate is the value of the service to the shipper. In the second case, it is what will the commodity bear.

For example: If different carriers contend for the carrying trade between two points, the charges of one are governed by the charges of the others. The shortest or most cheaply operated line, as a rule, determines the charges for both. The carrier operating the longer or more expensive line (it is not often that two lines are alike in respect to the conditions governing cost of service) cannot obtain more for its more expensive service than is charged for the same service over the shorter or cheaper line. Indeed, where use of the expensive line involves more time than the use of the other line requires, its charges must be less, as time represents interest on the cost of the property, convenience and other considerations of value to the shipper. A shipper will not, cannot, afford to pay more than a given service is worth, and in such cases its value to him is determined by its cost of reproduction—the price others will charge for the same service.

If the competition is between markets, the respective values of

the goods at shipping point and destination, limit the price the carrier can obtain for his service. If he charges more than the difference between these values, the goods will not move.

In either case the rate charged may be less, and it usually is considerably less, than the "actual cost," as the term has been defined herein; but it may, as a rule is, and ought always to be, more than the "additional cost," as nearly as that can be determined.

In both cases, the circumstances created by competition determine the rate of charge and the rate of charge determines in what quantities the property can be moved, or whether it can be moved at all and the actual cost to the carrier as well as his profits are affected by the volume of the traffic, whether it be more or less.

151 To illustrate: The carrying trade between New York city and San Francisco is, for the most part, subject to the competition of numerous carriers; steamships and sailing vessels by sea and the various transcontinental lines, some of which are "all rail" and others "partly by rail and partly by water."

As transportation by sailing vessel is the cheapest known, the rates charged by the sailing vessels determined the charges by all lines—the difference in the value of the service, *per se*, by ship and by rail represented by the differences in risk to the shipper (the rail carrier being an insurer of the goods while the ship is not), and the time occupied in the transit (being an average of four months against the ship) is overcome by the underwriter and interest account; the insurance and interest being in all cases added to the ship's charges in order to determine the full cost to the shipper of the transportation by sea as compared with his cost by rail.

There are several "lines" of ships engaged in this trade; that is, there are firms which engage in the business exclusively of transporting freight by sailing vessels; they either own the ships used or charter them by the voyage from owners; the business is mostly done with chartered vessels. From time to time, commission merchants engage in it as a part of their general business, chartering vessels and soliciting consignments of freight on a brokerage basis; and sometimes individual merchants or a combination of merchants charter vessels and transport their own goods; hence, the conditions and circumstances affecting the transportation of freight by sea and the rates charged therefor are extremely variable. They operate so as to keep the rates of all lines constantly fluctuating in the direction of the minimum. The other lines, overland, cannot charge what the service is worth, considering the "actual cost," but must accept the price currently fixed by their sailing-vessel competitors. What they can obtain, owing to the relative cheapness of the sea service, is never greatly above the additional cost of carrying an increased traffic. No combination between the overland carriers will alter these conditions, and a combination between the carriers by sea and the overland carriers is impossible, as no

152 company, firm or person can monopolize the ocean to the exclusion of others. The degrees in which different kinds and classes of goods are subject to the competition of ships for their transportation vary. For high-class goods the items of interest for

the difference in time, and insurance for the difference in risk to the owner, run up very rapidly. Then, some goods are damaged by the sea voyage in a manner not covered by insurance. Others of great bulk, occupy large space in the ship, which is a more important consideration to the ship than to the railroad. Still others, of a perishable nature, will not under any circumstances stand the long voyage. Others are seasonable goods, the demand sudden and of short duration. For these classes of goods, the overland carriers charge and obtain higher rates than for staple goods which will endure any means of transportation, because the conditions are not similar. The rates described from New York to San Francisco are lower than the rates from New York to Utah and Nevada and interior California points, because the business of the point last referred to is not subject to the same competition in like degree; the conditions are not substantially similar.

Take, for example, a case of competition of markets.

Stimulated by the reciprocity treaty between the Governments of the United States and the Hawaiian islands, the Hawaiian islands became large producers of sugar, which was brought to San Francisco and there refined. The supply greatly exceeded the Pacific coast demand, and a market had to be found for the surplus in the Missouri and Mississippi valleys.

It there met the Cuban sugar refined in New York. The cost of the raw product delivered at San Francisco, coupled with the greater cost of refining in San Francisco when compared with the cost of refining in New York, made it impossible to move this surplus to the Missouri river at a rate in any degree approaching "actual cost" of the service. It would only bear a charge very little above the "additional cost," taking into account the fact heretofore referred to, that for its transportation over the Central Pacific road, cars could be used which would otherwise have to be hauled empty.

153 The necessary rate was made, and thereby the volume of east-bound traffic over the Pacific roads was increased by many thousands of tons per annum. By this competition of the Cuban and Hawaiian producing markets for the consuming markets described, the consumers were greatly benefited, in that they obtained a staple article of food at very much lower prices, and the Pacific roads were benefited by securing an increased business at something more than the added cost of the additional work.

The sugar rate in question was made the subject of inquiry by the Interstate Commerce Commission. The commission justified it under the circumstances, but found the controlling conditions to be competition by ocean carriers for the same business. It was proven in that case, and is a fact that the Hawaiian sugar could be sent in its raw state to New York, there refined and shipped to the Missouri river at no greater cost for transportation than was charged by the Pacific roads; but I have placed the case under head of "competition of markets" for the reason that if there were no ocean competition the remaining market conditions would still compel the same rate.

The rate in question is lower than the rates charged for other

commodities of like class in respect to relative weight and bulk, value, risk, etc., moving in same direction, between same points, because the conditions affecting the movement are not substantially similar.

(3) Volume; compared with and considered in respect to its influence on other traffic; that is to say, whether the production of a given commodity or class of commodities forms in more or less degree the principal industry or industries of the communities served by the carrier;—its influence in creating or developing other traffic. For example:

If the carrier serves a lumber-producing district, an iron-manufacturing district, or if it serves an agricultural district, a coal-mining district or communities devoted to the production of the precious metals, its tariff must be framed for the promotion of these various industries, because upon them, respectively, depends the prosperity of the communities it serves, as well as its own.
154 Its entire business depends upon the development of the chief or particular industry to which its patrons are devoted. If that industry languishes, all other dependent and cognate business diminishes in like degree. For example:

Central and Northern California produce largely of wheat and barley for export. The annual export of wheat to foreign countries will approximate a million tons. The export trade is far more important than the domestic trade, it being fully seventy-five per cent. of the crop. The rates for transportation to tide-water points, where car and ship come together, are therefore made with reference to the foreign trade, which is of the greatest importance to the producers. Compared with these rates to tide-water points, the rates charged to intermediate points, where the wheat is ground for the local trade, are very much higher, as are also the rates for flour and grain used for feeding stock, distributed to the domestic trade; or even the rates for wheat exchanged by various sections of the State for seed. In other words, the rates to shipping ports in California on grain for export are considerably lower per ton mile than the rates in the opposite direction on like grain for domestic consumption. The production is so largely in excess of domestic consumption that the largest portion of the wheat-grower's product must be marketed abroad at prices fixed in Liverpool. The domestic trade is a mere incident to his prosperity which depends on the foreign trade. It is, therefore, of paramount importance to him to get his product to ship's side at the lowest possible cost for carriage. On the prosperity of the tiller of the soil, whether he grow cereals or fruit, nearly all other industries of the State depend. By enabling him to reach chief and controlling markets with his principal product at the largest profit, the carrier augments production, increases his own net earnings by enlarging the volume of the product to be carried by him and promotes every other dependent industry, which in turn contributes again to his profit. Therefore, he charges comparatively low rates for this service; rates below the "actual cost," but not below the "additional cost." The conditions with respect to the same product distributed to the local trade are

not similar, therefore the rates of charge are not the same.
155 The latter would be unreasonable, discouraging to production and trade if applied to the export business, while the export rates, if applied uniformly to all the business of the carrier, would consign him to bankruptcy.

Take another illustration: In 1876, central California began to produce raisins in considerable quantities. At that time the raisins used on the Pacific coast were of Spanish production, brought from New York by rail, at a transportation charge of three cents per pound. The local consumer was slow to substitute the "home" for the "foreign" product to which he was accustomed, because of an alleged inferiority. A market for the California product had, therefore, from the beginning to be found in the Eastern States. It would not bear the rate charged for bringing the Spanish product westward. It was taken, therefore, at about one-half that rate, one and three-fourth- cents per pound, which has since been considerably reduced. In 1876 the tonnage of raisins brought from the East to California at three cents per pound approximated one million pounds; the tonnage shipped from California to the Eastern States at one and three-fourth cents per pound was less than 70,000 pounds. In 1891 there were no foreign raisins brought to California, while there was shipped from that State to Eastern States 37,360,000 pounds. Had the carrier in 1876 made the transportation charge from New York to California, which was reasonable under the circumstances, the measure of his charge for carrying the product of the infant raisin industry of California to New York, that industry would have been checked, very likely destroyed, as the local demand was not sufficient to stimulate the investment of capital and labor necessary to the production of a quality of goods equal to the imported article. The possibilities of production in California were known and only required reasonable encouragement to develop. It was evident to the managers of the Pacific railroads that the business of carrying the supplies of raisins for the greater number of consumers in the Eastern States would be many times more valuable than that of carrying in the opposite direction the raisin supply for the consumers on the Pacific coast, and that a proper encouragement of the California industry promised an exchange of the
156 smaller business for the larger and more valuable one.

Besides, as the larger part of the general supplies of food, clothing and implements used by the producers in California, go from the Eastern States to California, that by the increased demand for such supplies required by the greater number of producers created by the rise of the raisin industry the carrying trade west-bound would not be diminished by the loss of the west-bound raisin tonnage but rather be enlarged. In these very important respects, the circumstances and conditions affecting the two classes of raisin traffic were not substantially similar. Hence a necessary discrimination in the rates charged for transportation services which apparently were alike.

This example, and the preceding one, might with equal propriety be classed under "competition of markets," but the paramount

influence on the carrier was the development of a local industry which promised to be very large and its influence upon cognate industries very great, hence I have placed them under this head.

Take another example: Southern California is devoted chiefly to the growth of citrus fruits, which have but a limited home market. The largest part of the product must be marketed in other States and Territories. It is not a staple article of food. Ordinarily the demand for it is restricted to its use as a luxury, which is comparatively small. The product now greatly exceeds the limits of this demand.

To make a market for the excess of the product over ordinary demands, the price has been necessarily reduced to bring it within the reach of all, to make it common with a larger class of consumers. Hence the railroads are required to transport this fruit to the principal markets east of the Missouri river at a rate below the "actual cost" notwithstanding refrigerator cars have to be furnished, which are nearly double the weight of ordinary freight cars of the same capacity, thus requiring the carriers to haul two tons of dead weight to one of paying freight, and the trains carrying the fruit are obliged to be run at an extraordinary rate of speed. While the rate charged is below the "actual cost" the imposition of a higher rate
157 would inevitably discourage consumption, and in like degree reduce production; consequently would lessen the volume of traffic not only in the amount of fruit carried, but of that which is more profitable, namely, the supplies required by those engaged in this industry. It is above the "additional cost," and that excess is a profit to the carrier. By taking these goods at this comparatively low rate, no person, community or traffic is injured, but all are benefited: the consumer, to whom a new article of food (call it a luxury if you will) is brought at prices he can afford; the producer, for whom is provided a market at reasonable prices for all he can or chooses to produce; the merchant and manufacturer, who furnishes the producer with supplies, provisions, clothing and implements—for, being prosperous, the producer is more liberal in his purchases; the carrier, who increases his net income; all other communities served by the carrier, in that, as before stated, the history of transportation will show that as the carrier's net income permanently increases, the average charge for transportation decreases.

The rate for the same product in same quantities (car-loads) from the same territory to points in northern California is proportionately very much higher, being about two cents per ton mile, notwithstanding that for this service only ordinary cars, averaging one ton of dead weight to one ton of capacity are required. The difference in the condition justifies the discrimination. In the former case, the conditions are such that fruit will not bear a higher charge; the carrier must accept for its service what the fruit will bear or lose the business. In the latter case, the rate charge is reasonable, *per se*, and the conditions are such that the fruit will bear it. What is a just and reasonable rate in the latter case, would be an unjust and unreasonable one if applied to the former case; because the cases do not present similar circumstances and conditions.

Take another illustration: The Southern Pacific Company operates railroads running through Utah, Nevada, California, Oregon, Arizona, New Mexico, Texas and Louisiana, and various steamship lines, the chief one running between New York city and New Orleans.

158 The State of Nevada's chief industries are silver mining and raising cattle. All other industries in the State, whether agricultural or manufacturing, and all trade depend mainly on these two.

The silver ores now produced are of very low grade and rebellious; owing to high cost of fuel and labor, they must be moved to San Francisco, Salt Lake City, Denver, Omaha or Kansas City, for separation. They are moved at less than one cent per ton mile, considerably less than the "actual cost." A few years ago, when the ores produced in Nevada were free milling and of high grade, the rates charged for transporting them or the product of the ore to market were very much higher. They could bear high rates—rates that would pay more than "actual cost," but the conditions now and then are not similar, hence the difference in rates.

Two years ago, an unprecedentedly severe winter, succeeding an extended period of drouth, which had greatly reduced the grass on the cattle ranges, leaving live stock comparatively poor and weak, destroyed nearly all the cattle in the State. The stockmen were well nigh ruined. The carrier was called upon to carry stock cattle from Arizona and New Mexico to Nevada at rates that barely paid the "additional cost." By doing so, the cattle industry of Nevada was revived and the foundation laid for a future profitable business in carrying them and their product to the consuming markets of California, and at the same time the smaller industries of the State—production of feed, grains and hay—were promoted, with all other dependent industries. The rate charged for carrying these very cattle, when fattened, to the consuming market is, per unit of service, more than twice that in the case referred to. It is probably more than the "actual cost." But the circumstances are not similar. The difference in the circumstances make different rates necessary and just.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

159 Ans. to Int. 5. As I have said in answer to the fourth original interrogatory competition is of controlling force in determining transportion charges.

One effect of "competition between carriers" is to deprive the carrier of the power to fix the price for his service with regard to expenses and profit; he can only have regard to the "additional cost." Whether the business will pay anything above that cost, or how much, is determined not by the carrier, but by his rival,—especially if the competitor operates a cheaper line. For example: The carrying trade between New York and San Francisco, for the most part, is subject to competition between overland railroads and

steamships and sailing vessels following the ocean route. The last named afford the cheapest known means of transportation; the rates of charge by all lines, therefore, are determined by the cost of shipping by sailing vessels.

Another effect of "competition between carriers" is always to reduce the charges below the "actual cost" and frequently to the narrowest possible margin above "additional cost." It is seldom that the respective means of transportation employed by different carriers accord in respect to the cost of conducting them or in their relative value to the shipper. As in the case above illustrated, the competition may be between carriers by water and carriers by railroad. The difference between cost of transportation over waterways and over railroads is so great that carriers using the latter means, in respect to heavy goods of small value cannot compete at all, and in respect to most freight must reduce charges to the minimum. For example: "Salmon in cans, cased," a very important product of the Pacific coast, is now being shipped from San Francisco to New York by sailing vessels at a rate of 37½ cents per 100 lbs., gross weight. Its value is about $6.00 per 100 lbs., gross weight. The rate of interest is 6 per cent. per annum, which for four months, the time required for the voyage, would equal 2 per cent. The insurance rate is 1½ per cent.; interest and insurance equals 3½ per cent. of value, or 21 cents per 100 lbs., making cost 58½ cents per 100 lbs.

The minimum rate overland is $1.00 per 100 lbs., and while
160 that might bear a slight reduction, the rate of 58½ cents would not pay even "additional cost" to the rail carrier. The ship's rate on wool is 50 cents per 100 lbs. The overland rate is $1.50 per 100 lbs., at which the overland carriers fairly compete, dividing the trade with the ships; yet, considering the bulk and value of the goods, the wool rate affords the railroads but a very small profit over "additional cost."

Or, the competition may be between longer and more indirect lines, and shorter or more direct routes. The latter are preferred by shippers, at equal rates of charge, hence, their competitors must overcome their comparative disadvantage by lower rates. The "Canadian Pacific" competes for the trade between New York and San Francisco by way of Vancouver, B. C., and offers lower rates than the United States railroads, by from five to seven per cent., notwithstanding that the rates of the United States roads are by ocean competition forced below a fair compensation.

Or it may be between lines of different physical characteristics, which greatly affect relative cost of operation, as well as their respective value to shippers. The gradients, curvatures, expense of protection from snow and the absence of coal deposits all operate against the Central Pacific road and in favor of its southern and northern competitors. The grades and curves of its competitors are much easier, the expense of protection from snow is much lighter, while all of them have very much cheaper fuel, owing to the liberal coal deposits along their respective lines.

It is easy to see, then, how competition between carriers, the constant study and pursuit of his separate interest by the individual

carrier, each striving to add to the volume of his traffic at anything above the "additional cost" of moving it; and the perpetual efforts of the shipper to obtain an advantage by working one carrier against another, acting upon the conditions described, operate to force the rates for competitive traffic down to the minimum;—to rates that no carrier could afford to accept for all his traffic.

Another effect of competition between carriers upon the
161 conditions and circumstances affecting the conduct of transportation is that it may, and frequently does require the carrier to transport similar goods longer distances over the same line and in the same direction at less than the reasonable charges for intermediate hauls—at rates which, if applied to the intermediate hauls, would result in very serious loss.

For example:

The overland rates charged for transportation from New York to San Francisco and other Pacific coast terminal points (points on the Pacific coast, which like San Francisco, may be reached by the natural waterways; such as San Diego, Los Angeles, Sacramento, California; Portland, Oregon, and Tacoma and Seattle, Washington) are, as a rule, owing to the competition of sailing vessels peculiarly subject to that competition, lower than the rates to interior points. The rates to the interior points are, as nearly as possible in view of all circumstances, fixed so as to give the carrier adequate compensation for his work. As explained above, the rates to the terminal points are determined by the cost of shipping via the ocean route. The rates to interior points are necessarily limited by their respective proximity to a terminal point; that is, they cannot exceed the cost of shipping via the nearest terminal point, hence competition between carriers meeting at a given point affects conditions at other points in the degree of their proximity to the competitive point.

To illustrate:

The maximum rate from New York to interior points for clothing and fine dry goods is $4.20 per 100 lbs.; the same as to the terminal points; because the value of these goods; the items of interest and insurance make the cost of shipping by sea relatively high compared with goods of lower values; hence the railroads can compete at reasonable standard rates.

For cotton goods, the rate to the interior point is $4.20 per 100 lbs., against a rate of $2.35 to the terminal point; thus cotton goods could be shipped to the terminal point and returned to an interior point whose rate was less than $1.85 per 100 lbs. from said terminal
point were the standard of $4.20 demanded; hence the rate
162 on cotton goods from New York direct to all interior points which can be reached from a terminal point at a rate of less than $1.85 per 100 lbs., is made by adding $2.35 to the rate per 100 lbs. from the nearest terminal point. In this way the sailing-vessel competition affects the carrying trade of cotton goods from New York to all points on the Pacific coast whose distance from the nearest terminal point can be covered at a rate of $1.85 per 100 lbs. or less. The rate for cottons from New York to other interior points,

not influenced by the competition of the sailing vessels, is not more than a reasonable return for the services of the carrier, and the fact that the dealer in, or consumer of cottons at the terminal point or other interior point, where the charges of the carrier are determined by said competition is charged less for a greater service, does not injure the dealer in or consumer of cottons at the interior point where competition does not exist; his rate is no greater than it would be if there were no competition at the terminal point. The carrier has simply to accept a lower rate of profit in the one case than the other. By doing so he increases his gross profits, and the more and sooner he does this, the better able he is to reduce charges on all traffic, competitive, non-competitive; and the more quickly he does so, I repeat, that as the carrier's profits increase above a reasonable return, as a rule, his general rates diminish. This does not result from an excess of philanthropy upon the carrier's part, but from the fact that with the business of transportation, as with all other commercial enterprises, there are always men and capital ready to engage in competition for an exceptionally profitable business, even though it may have been pioneered and developed by others only after years of hard work and barren results.

The rate from New York to said interior points on iron in car-loads is $2.00 per 100 pounds; to the terminal point $1.30 per 100 pounds. For nails, in car-loads, the rate to the interior point is $2.00 per 100 pounds; to the terminal point $1.20 per 100 pounds. These rates are very much lower than the other examples. The reason is that their value is very much less; so low that they are peculiarly susceptible to shipment by sea, as the items of in-
163 terest and insurance (important elements of cost by sea) amount to very little. The effect of the sea competition on the rates for the said goods to interior points, differs from that described for cotton goods only in degree. These examples are selected as the extremes which fairly represent the whole.

For an example in the other direction, take the case of Salmon, already referred to. The cost by sail, San Francisco to New York, is 58½ cents per 100 pounds. It can, and some of it will, be shipped from New York to Chicago at a rate of 20 cents per 100 pounds, making the cost of transportation from San Francisco to Chicago via Cape Horn and New York, for that class of goods, 78½ cents per 100 pounds, against a rail rate of $1.00 per hundred pounds. The railroads might meet this competition to Chicago, but they could not afford to do so if the rate necessary should be made the maximum for all similar business to points between San Francisco and Chicago.

In brief, competition between carriers affects the conduct of transportation in like manner, but perhaps in greater degree as other influences which affect the circumstances and conditions that regulate transportation charges. It presents conditions which differ from those affecting non-competitive traffic, which must be dealt with accordingly; that is the carrier must adjust his manner of work and his charges to those particular conditions. If not, he will have no work. In like manner, he must adjust his methods and

charges to promote the citrus fruit industry, or the raisin industry if he serves communities devoted to such pursuits. Or he should encourage the growth of cereals, if he serve an agricultural district, and foster mining industries and the raising of cattle, if those, respectively, are the avocations of his patrons. He must do so for precisely the reason which impels him to engage in competition with a rival carrier, viz: that he may increase his business, have more work to do and make a profit on the increase of his services to the public. The reflex influence upon the public interest of an intelligent adjustment of charges by the carrier to the peculiar conditions created by competition between carriers and the
164 other considerations is, I take it, so evident as not to require further illustration than has already been given.

Competition of Markets.

I can find no appreciable difference between "competition between carriers" and "competition of markets" in their effect upon the conduct of charges for transportation.

For example: Take the rate on sugar from San Francisco to Kansas City—distance about 2,000 miles. It is 65 cents per 100 pounds. It cannot be more on account of the competition of the Cuban sugar. The rate to Denver—600 miles less distant—on sugar is $1.00 per hundred lbs. Yet, the Denver rate is very low for a haul of 1,400 miles over the mountainous and desert territory lying between it and San Francisco. The competition which is encountered at Kansas City and which does not exist in anything like the same degree at Denver, compels a lower rate for the greater haul to the former city. In this respect the effect of "competition of markets" and "competition of carriers," as previously illustrated, are the same.

"Competition of markets" can seldom be separated from "competition of carriers." Generally, the rival markets are served by different carriers, who join in the competition. That is the case with the sugar referred to. The Cuban sugar would be carried from New York to Kansas City by the trunk lines and their connections, while the Hawaiian sugar would be carried to the Pacific railroads; the one moving west, the other east, from the refining point.

If the Hawaiian product and the Pacific roads did not compete for the sugar trade of the Missouri valley, the Cuban product and the trunk lines would monopolize it and the cost to the consumer would be largely more. In like manner, the cost to consumers at points west of Kansas City would be increased as the freight rates to said points from New York base on Kansas City or other nearer Missouri River crossing. By making the low rate from San Francisco to the Missouri river, the rates to intermediate points were not increased, but decreased just in proportion as the rate from
165 Kansas City to the intermediate point was less than 60 cents per 100 lbs.; the maximum rate to an intermediate being $1.25 per 100 lbs. As a matter of fact, this competition between the Hawaiian product and the Cuban product for the sugar trade

of the Missouri valley, has reduced prices to consumers at all points east of the Rocky mountains and west of Chicago. If the 65-cent rate for sugar to the Missouri river could be used only on condition that it should be made to apply to similar commodities and should also be made the basis for proportionate rates to intermediate points, or even the maximum rate for sugar, only, to intermediate points, the carriers would be obliged to retire from competition for Missouri River trade. I know by actual test that they would be better off, earn considerable more net without it than with it under such conditions.

J. C. STUBBS.

Testimony of Oscar G. Murray, of Cincinnati.

Int. 1. State your name, age, residence and occupation.

Ans. to Int. 1. Oscar G. Murray; age, forty-four years; residence, Cincinnati; occupation, traffic manager Chesapeake & Ohio and Cleveland, Cincinnati, Chicago & St. Louis Railway Companies.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

Ans. to Int. 2. I have been connected with the traffic department of railroad service continuously from 1872 to the present time. Have occupied the position of ticket agent, station freight agent, assistant general ticket & passenger agent, assistant general freight agent, general freight & passenger agent, freight-traffic manager and traffic manager.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions" as connected with the railroad transportation of passengers and property in the United
166 States was, at, and prior to February 4th, 1887, a railroad-traffic term.

Ans. to Int. 3. The phrase "under substantially similar circumstances and conditions" was not, to my knowledge, in common use in the United States as a railway-traffic term prior to the introduction and passage of the interstate commerce bill by Congress in the early part of the year 1887.

Int. 4. If you answer the last question in the affirmative, state what that phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States.

Ans. to Int. 4. No answer.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 5. The railway company that enters into competition with the water carrier has, independent of any cost of right of way, expensive roadways to construct and continue, terminal property, depots and stations to secure, representing large expenditures, and being circumscribed as it is by more rigid obligations to its patrons in the transportation of property than is its rivals, cannot operate its line as cheaply. Competitive traffic secured to rails under such

circumstances will not bear any higher rates than are charged by the water carrier, with the possible addition of the insurance risk. Rates so made may yield a very small profit, but even this small profit assists in meeting the operating expenses and interest obligations of the road. If the competitive business referred to was abandoned, the rates applying upon the local or non-competitive traffic would necessarily have to be increased to meet the deficiency.

In the case of competition between carriers of the same class operating entirely by rail, the circumstances of transportation amenable to one or more, consisting of low grades, less distance, or other superior facilities, enables it or them to transport freight at a less cost than the others. This frequently requires the expenditure of large amounts to reduce grades, better the tracks and
167 roadways, purchase a higher class of equipment, and to procure motive power of more ability, in order to equalize in part a situation which would not exist except by competition, although without it the community, shippers and consignees might be reasonably and diligently served. Even if such competition is regulated by agreement between carriers, or between railways and waterways, such of them as are more favorably situated and located can transport the property at a rate which would be to them profitable, and yet to others engaged in the same traffic unremunerative. Under such conditions the carriers who can most economically handle the business fix the rates, and these have to be adopted by all in competition if they so continue, regardless of the net results of that particular business to them. There are no carriers within my knowledge engaged in the transportation of the same character of business between the same points whose conditions and circumstances are exactly alike, and those of the inferior class, in order to equalize their situation and neutralize their disabilities, are obliged to change the conditions and circumstances which would otherwise control the operation of their property, in order to place themselves upon an equality with the carriers of the superior class. The advantages which may be possessed by any one carrier affect the conditions of others who are competing with it to the extent of making it necessary to be upon the same plane. While a certain revenue is absolutely necessary for every carrier to secure, in order to meet its expenses and fixed charges, a share of its business, generally designated as through traffic, because of continuous carriage, can be handled cheaper than its other traffic not governed by the same methods; and it is therefore evident that a large competitive business between points quite distant from each other can be handled more cheaply per ton per mile than can its local business. A withdrawal from competition by any carrier, because of its inability to handle the business at the same rate per ton per mile with its more favorably located competitor, either rail or water, would compel it, in order to meet its obligations, to increase its rates to local points, and at the same time deprive its constituents of any benefit
168 they would receive from the operation of more than one line to or from their location. The conditions, therefore, of any carrier which prevail in the handling of its business to or from

strictly local territory, where it has no competitor, are necessarily affected and changed, to or from a common point, by reason of the ability of its neighbors engaged in the same business to handle the traffic under more advantageous circumstances.

Int. 6. Please explain fully how, or in what respect the existence of competition between markets affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. To a large extent the existence of competition between markets affects the circumstances and conditions of the transportation of property, in the same manner as the existence of competition between carriers. In the case of markets widely separated from each other, seeking the trade of a common point for a product which is indigenous to all of the markets, the difference in cost of handling by the different carriers, considering all of the elements of transportation, be they by rail or water, consisting in the main of the difference in the distance hauled, the medium of transportation, and the character of roadway traversed, creates an expense which is different per ton per mile to each of the transportation companies; the rate charged, which is the only matter entertained by the forwarder and receiver, must in all cases be alike where the conditions at the markets are alike; therefore the conditions which surround the carriers have to be from time to time changed in order to remove the natural obstacles which are in their way not encountered by those in a more favorable situation. In the case of a market which is at a considerable expense for the procurance of the raw material from which to manufacture a certain product, desiring to reach a consuming point which can as well be supplied from another market that secures its raw material at a cheapened cost, the carrier from the more expensive point of shipment in order to enjoy or engage in movement of the business, or build up the industries located upon its line, is obliged to assist in neutralizing
the existing disabilities, without which assistance the manu-
169 facturing industries located upon its line would languish
and the carrier would be forced to yield the handling of such traffic to its competitors, unless conditions surrounding its movement were changed to meet the situation. Reversing the case, the products of a specific territory would be subject to the dictation of one market if the carriers that reach rival markets did not annihilate the differences in distance and the conditions surrounding the transportation of the article in order to enable the producer to reach them all upon practically the same basis. While it is claimed that every market should have the advantages of its geographical location, and that it is improper and erroneous for any common carrier to destroy its advantages, a policy of this kind, carried out in practice, would build up certain localities as favored markets for the production or manufacture of particular articles, or the consumption of raw material, to the detriment and disparagement of others. It would decrease competition and prevent carriers engaging in the transportation of similar traffic as rivals, and deprive many communities of the benefits which they expect and have reason to hope for, in the assistance which they have rendered to the creation and

building up of transportation companies and the establishment at various points of industries. Many industries would not today exist, if the disadvantages and disabilities under which the territory, where they are located, labor, were not removed, at least in part, by the carriers upon whom they depend for a market. The endeavor of transportation companies to equalize the location of industries established in the far West against similar ones located in the East, or those in the South as against those in the North, where more favorable conditions prevail, compel them to create and work under conditions which would not exist if there was a centralization of production instead of a distribution as at present. If carriers were required by law to apply the same rate per ton per mile for all distances it would obliterate all competition between markets, and be equivalent to establishing a protectorate in favor of, and to the advantage of the manufacturing and producing points most favorably geographically located. It would prevent competition; it would
170 clearly define the boundary lines in which each manufacturer was the sole distributor; it would naturally increase the cost to the consumer; it would relegate the railway companies to the transportation of the natural production on their own line; it would prevent them from creating or assisting competitive markets. Carriers enter into competition with each other for the benefit of the markets they respectively reach or represent, and necessarily the conditions of transportation of such business are changed from time to time to suit and comply with the circumstances which commercial reasons and necessities may dictate.

OSCAR G. MURRAY.

Testimony of John B. Peck, of Atlanta, Ga.

Q. 1. State your name, age, residence and occupation.

A. John B. Peck, 64 years of age, residence Atlanta, Ga. I have no other occupation at present but looking after my own affairs.

Q. 2. State how long you have been connected with the traffic business in the territory south of the Potomac and Ohio rivers and east of the Mississippi river, and state the various positions you have filled during that time.

A. I commenced as clerk at the depot at Covington, on the Georgia railroad, September 1, 1846. I was successively conductor, assistant agent at Atlanta for that company, general book-keeper, treasurer of Atlanta & West Point R. R., assistant superintendent of Montgomery & West Point railroad in Alabama, master of transportation of Western Atlantic Railroad of Georgia, general agent of Crescent through freight line at New Orleans, general passenger agent of the Selma, Rome & Dalton R. R.; general superintendent of the same; general superintendent of the Atlanta & Richmond & Air Line railway, general agent Southern Railway & Steamship Association, New York; general superintendent South Carolina railroad, general manager South Carolina Railway Company. I
left the service of the latter December 1, 1889. During this
171 period I was disconnected with railway service at different

times thirteen months in all, making forty-two and three-quarter years of railroad service.

Q. 3. Before the present railroad system of Georgia was built, to what extent, if any, was the transportation of freight conducted by wagon?

A. Before the construction of railroads, the entire transportation of the State, except what was done over water-courses, was done by wagon. I have no means of ascertaining what was the relative amount of each.

Q. 4. What rates were generally charged by wagons for the transportation of freight, and how was freight classified when transported by wagon?

A. The wagon rate was 20 cents per cubic foot or $1.00 per hundred pounds per hundred miles for all transportation for 20 miles and upwards. Under 20 miles, the rate was the same as for 20 miles, which was considered a day's work, and any less distance spoiled the day, anyway. The capacity of a wagon was estimated at forty cubic feet in space, and the power of four horses as capable of hauling 4,000 pounds. In classing freight, the wagoner had the right on all doubtful packages to both measure and weigh, and to class it light or heavy, as would produce to him the greatest revenue. If it weighed more than 20 pounds to the cubic foot, it was heavy; if less, it was light.

Q. 5. I notice that the charter of the Georgia Railroad Company, granted in 1833, authorized that company to charge not exceeding 50 cents per hundred pounds upon heavy articles and 10 cents per cubic foot upon articles of measurement per hundred miles. In those days how was it determined what articles should be classified as heavy, and what articles of measurement?

A. The same rule was observed by railroads in determining what was heavy, or articles of measurement. The legislature adopted the wagon rates divided by 2, and the railroads adopted the wagon classification, so far as light or heavy articles were concerned; but while all light articles were charged the same per cubic foot,
172 heavy articles were still further classified, and there were varying rates on different articles, based partly on space occupied and partly on the value of the goods.

Counsel for plaintiff objects to all questions and answers relating to the transportation of goods and property by wagons, because the same are irrelevant.

Q. 6. Please explain fully how or in what respect, if at all, the existence of competition between carrier and carrier, affects the circumstances and conditions under which the transportation of property is conducted.

A. In the early history of railroads, tariffs were made by increasing the rate with the distance. When freight was shipped over two or more roads each charged its own rate, so that the through rate was the sum of the locals. Of course all freight was shipped by the shortest and most direct line. Competition was begun by long lines competing with shorter lines; and the long lines, compelled to meet

the rate of shorter lines between competitive points, adhered to their former local rates, because a reduction to the basis of competitive rates, the volume of through traffic being small as compared with the local, would involve a loss of revenue instead of a gain from the competitive traffic. The discrimination of charging more for a short than for a long distance began with, and was the necessary result of, competition. In thickly populated sections of the country the large number of railroads required to carry their traffic have made competitive points so frequent, that it is no longer practicable to charge higher rates to local than to competitive points, and the large volume of traffic enables those roads to earn a sufficient revenue on this basis. But as a rule, in the territory named in question 2, these conditions have not yet obtained, and the distance between competitive points has enabled, and the smaller volume of business has compelled, the railroads in that section to adhere to the original policy of charging more in certain cases for short than for longer distances.

Q. 7. State what difference there is, if any, where the competition between the carriers is by rail and where it is by water, as to the effect, if any, which such competition may have upon the
173 circumstances and conditions under which the transportation of property is conducted?

A. As a rule transportation by water is cheaper than by rail. The reduction from what would have been a reasonable rate between the two points, if no competition existed, has for this reason been greater at points where water competition exists than where the competition was between railroads, and hence a more marked difference between local and competitive rates.

Q. 8. Please state what would be a reasonable rate per one hundred pounds on first-class freight, in less than car-loads from Cincinnati to Atlanta, and state your reasons for any opinion you may express in regard thereto.

A. The rate on first-class freight in less than car-loads from Cincinnati to Atlanta has been fixed at $1.07 per hundred pounds for several years. So far as I am informed no complaint has ever been made of this rate on the part of the public, which I regard as strong presumptive evidence of its reasonableness. I have no data from which I can base any detailed opinion as to the reasonableness of the rate, as I am not familiar with the details of the operations of the roads over which such freight is transported.

Q. 9. Please state what would be a reasonable rate per hundred pounds on first-class freight in less than car-loads from Cincinnati to Augusta, and state your reasons for any opinion you may express in regard thereto.

A. Assuming that $1.07 is a reasonable rate from Cincinnati to Atlanta, I should say that $1.37 would be a reasonable rate to Augusta, because that would be about the usual increase in proportion to distance, where such increases can be made. The same rate per mile would give a rate of $1.47, but it has never been the custom of railroads to charge the same rate per mile on longer distances.

Q. 10. Please state whether or not, in your opinion, there could

be any circumstances or conditions which would make it reasonable to charge the same rate from Cincinnati to Augusta as from Cincinnati to Atlanta, considering that Augusta is 171 miles further from Cincinnati than Atlanta.

174 A. I think under existing circumstances it is reasonable to charge the same rate from Cincinnati to Augusta as to Atlanta; because, inasmuch as the rate to Augusta is made by a combination of locals, by lines entering Augusta from the East, that is the highest rate that can be charged with the expectation of carrying any business through Atlanta. Practically Augusta and Atlanta must be treated as being located the same distance from Cincinnati. In making joint rates, where there are competing lines, it is usual wherever practicable, to adopt the sum of locals by the shortest line. In determining this question the line which has the lowest sum of locals is of necessity treated as being of the shortest line, because this rate is the highest rate that can be made between these two points; for if a higher through rate than this is made, all the traffic will go by the line where the sum of the locals is less than the through rate. The line from Cincinnati to Baltimore has a very large volume of business and can afford to and does, carry all freight at much less per mile than the lines between Cincinnati and Atlanta. From Baltimore to Savannah freight is carried by water, which is also a cheaper rate. The 132 miles of railroad from Savannah to Augusta is in competition with the Savannah river, so that there are influences on each of the three lines composing the route from Cincinnati to Augusta that makes up the total, which do not exist between Cincinnati and Atlanta. Under these circumstances the relative position of Augusta and Atlanta to Cincinnati is practically the same, and under the circumstances both rates are reasonable.

Q. 11. What in your opinion would be a reasonable rate per hundred pounds on first-class freight, in less than car-loads, from Atlanta to Social Circle; Social Circle being a station on the Georgia railroad 52 miles east of Atlanta; and state your reasons for any opinion you may express?

A. I regard 30 cents as a reasonable rate on first-class freight from Atlanta to Social Circle, for the reason that the Georgia railroad commission has fixed that rate, and I am satisfied that the commission would not make any rate that was unreasonable,

175 at least so far as the public is concerned. I have no data from which I can base an opinion in detail.

Q. 12. Of the rate of $1.07 per 100 pounds from Cincinnati to Augusta, the Georgia railroad accepts as its proportion 28 and 4-tenths cents. Please explain why you think it is reasonable for that railroad to charge a local rate of 30 cents per hundred pounds for transporting freight from Atlanta to Social Circle, a distance of only 52 miles, when it accepts 28 and 4-tenths cents as its proportion of a through rate for transporting the same kind of traffic from Atlanta to Augusta, a distance of 171 miles.

A. A railroad is built primarily for the accommodation of the territory through which it runs. If its revenue is restricted to this

business, the rates must be such as to insure a revenue sufficient to meet its expenses for operating and maintenance or the road must cease to be operated. When it takes competitive traffic, it must accept such rates as are made by other lines. Whatever profits are made by the corporation from its competitive traffic enable it to that extent to reduce its local rates, provided the earnings from the competitive and non-competitive rates produce a revenue greater than is necessary to pay the expenses of operating and a fair return on the investment. So long as the total does not exceed this aggregate, it cannot be claimed that the rates charged are unreasonable. So far as the non-competitive rates are concerned it is just and reasonable that the rates should increase as the distance increases; because except for the competitive business, the road must be supported by the territory through which it runs, and it is only fair that he who uses the most track should pay the most money. But the competitive rates must be accepted as made by other carriers. The Georgia railroad has only the option of taking it at such rates or letting it alone. If it adjusts its local rates on the basis of the competitive rates, it loses rather than gains revenue, because the volume of business is not large enough to support the road on this basis. The residents of the local towns do get certain benefits from the competitive traffic. The merchant at Social Circle gets as much benefit from the competition from Cincinnati as the Atlanta
176 merchant does, because he pays the same rate to that point. For the additional transportation from Atlanta to Social Circle he gets a less rate than he could get if the Georgia railroad did not engage in competitive traffic; although he does not get as much advantage as he might if Social Circle was a competitive point. Beyond any question he gets better transportation facilities than the road could afford to give him if it did not engage in the competitive traffic. In short, the road which has no means of operating, except the revenue derived from transportation, does the best it can for him, and the discrimination it makes against him is reasonable because it is imperative.

Q. 13. If the rate of $1.07 per 100 lbs. is charged on freight from Cincinnati when shipped through to Atlanta or Augusta, and it costs a shipper $1.37 cents per 100 lbs. to ship the same kind of freight from Cincinnati to Social Circle, only 52 miles east of Altanta, and 119 miles west of Augusta, what effect, if any, does it have to discriminate against Social Circle in favor of Atlanta or Augusta, or both of them. State fully your reasons for any opinion you may express.

A. The only discrimination in my opinion that is made against Social Circle, is the result of the construction of certain railroads. There was a time when the location of Social Circle gave it from Cincinnati higher rates than Augusta and lower rates than Atlanta, because all that business came through Augusta, both to Social Circle and to Atlanta. The construction of lines between Cincinnati and Atlanta brought Atlanta practically as near, as I have already shown, to Cincinnati as Augusta was. But while it left Social Circle more distant from Cincinnati than Augusta, it changed

the relation of Social Circle to Atlanta, by making Social Circle more distant, instead as before less distant, from Cincinnati than Atlanta. That it did reduce the rates from Cincinnati to Social Circle as much as the difference between the local rate for 119 miles from Augusta and the local rate for 50 miles from Atlanta, so that Social Circle did derive a benefit from the construction of the lines between Cincinnati and Atlanta, though in a less degree than Atlanta derived. When the Georgia railroad was built a town
177 ten miles distant from the track received some benefit, but the town on the track derived a still greater benefit, just as Atlanta derives a greater benefit than Social Circle from the construction of the lines between Cincinnati and Atlanta, but I have never heard any complaint of the Georgia railroad discriminating against any town ten miles distant from its track.

Q. 14. What is meant by the cost of transportation service?

A. The cost of transportation service on a railroad is whatever it costs to operate and maintain that railroad, since its only business is that of transportation. What is the cost of carrying a passenger or a ton of freight can only be approximated, since a very considerable proportion of the expense is incurred for both, and there is no accurate method of dividing it. As for instance, there is no method of ascertaining just how much it costs to maintain the track for passenger service or for freight service.

Q. 15. What is meant by the value of transportation service?

A. The sum of commercial values is the amount paid by the consumer. This is made up of three elements—the amount received by the producer, the profit of the merchant and the amount paid the carrier. The value of transportation is the difference between the amount paid by the consumer and the amount received by the producer, less the amount received by the merchant.

Q. 16. What relation, if any, does the cost of service bear to the value of service; I mean transportation service?

A. The cost of service is of course necessarily an element in the value of transportation, because it is not to be assumed that the carriers would perform the service at less than cost.

Q. 17. Are you acquainted with Mr. Virgil Powers, a member of the railroad commission of the State of Georgia, and if so, how long has he been connected with the traffic business in the territory south of the Potomac and Ohio rivers and east of the Mississippi river?

A. Mr. Virgil Powers became commissioner of the Southern Railway & Steamship Association in 1875, and continued in that service until 1891. He had before 1875 been the general super-
178 intendent of the Southwestern railroad several years. I do not know how many.

Q. 18. Are you acquainted with the Georgia railroad leading from Atlanta to Augusta? Have you had any opportunity to notice how it has been operated and managed during the last ten years? If so, state how its management and operation has been conducted.

A. I have had the opportunity of noticing how the Georgia railroad has been operated and managed, afforded to the general man-

ager of the connecting railroad company, which had intimate relations with it. I regard the management of the Georgia railroad as having been eminently intelligent, observing a due regard to economy, and as having been conducted with strict and unvarying integrity.

Q. 19. State whether the freight rates charged by railroads in the territory south of the Potomac and Ohio rivers and east of the Mississippi have increased or diminished during the last 20 years?

A. In my opinion, these rates have been diminished fully 50 per cent.

Counsel for plaintiff objects to all the answers in this deposition not heretofore objected to, because the same are irrelevant, and because of their argumentative character, said answers being more in the nature of argument for the railroads than statements of facts.

Cross-examination by Mr. DARNELL:

Q. 1. I have observed that in your direct examination your answers to all the questions were prepared, and that you read the same from manuscript. How, when and under what circumstances were these answers prepared, and in their preparation with whom did you confer?

A. I wrote the answers to the questions principally at my home, and without conferring with anybody.

Q. 2. How do your answers appear to be directly in response to written or printed questions submitted?

A. Because the questions were handed to me by Mr. Baxter to answer.

179 Q. 3. You have stated that the rate of freight—first-class—on different lines of railroad on through shipments are the sum of the locals over such lines. Is it true that the sum of the locals over the Cincinnati, New Orleans & Texas Pacific railway, the Western & Atlantic railroad and the Georgia railroad from Cincinnati to Augusta is no more on the class of freight mentioned than $1.07 per hundred pounds?

A. I did not so state. What I said was that the through rates were generally the sum of the locals by the lines which made the lowest total, and that this was the case with the rate from Cincinnati to Augusta by way of Baltimore.

Q. 4. You have stated that in your opinion a rate of $1.07 per hundred pounds, first-class freight, from Cincinnati to Atlanta, Ga., would be reasonable, and that a rate from Cincinnati to Augusta, Ga., of $1.37 per hundred pounds would be reasonable; now, explain this as applicable to a through shipment from Cincinnati on a bill of through shipment from Cincinnati to Social Circle on the Georgia railroad. As much being charged for that shipment as for a like shipment to Augusta, Ga.

A. If competition at Augusta would allow a rate of $1.37 to that point, the rate from Cincinnati to Social Circle would be the same as to Augusta. This, however, would be accidental and would not be true at any other local station, the local rates increasing with the

distance, and the $1.37 rate to Social Circle being the local rate added to the Atlanta rate. I have given as fully as I am able in my direct examination, the reasons why through rates to local stations must be made by adding the through and local together.

Q. 5. In your answer to cross-question 3, you state that the rates from Cincinnati to Augusta, by way of Baltimore, which is $1.07, was the sum of the locals collected by the various lines from Cincinnati to Augusta, by way of Baltimore. State the local rate of each line, rail and water, from Cincinnati via Baltimore to Augusta, naming each line.

A. The terms "sum of the locals," in railroad parlance, does not necessarily mean the sum of the local rate of each of the
180 companies composing the through line, but applies equally to two or more intermediate joint rates, which from any cause may be made less than the sum of the locals. The $1.07 rate to Augusta was made by adding the local rate from Cincinnati to Baltimore to the rate charged by ocean from Baltimore to Savannah, from Savannah to Augusta, by way of the Savannah river, which was 45c. The joint rate Baltimore to Augusta, via part rail and part water *rates*, (routes) either by way of Savannah, Portsmouth or West Point, Virginia, was 89c. The rate Cincinnati to Savannah, by way of Baltimore was 88c., and the rate Savannah to Augusta by rail 46c., which would make the total of $1.34.

Q. 6. When was this rate of $1.07 fixed, and by whom; or by what carriers?

A. To the best of my recollection it was fixed about 1879 or 1880. It was fixed by the Southern Railway and Steamship Association.

Q. 7. Can you state whether that association controls rates from Cincinnati to Baltimore?

A. It does not.

Q. 8. State the name of each line composing the through line from Cincinnati to Augusta, via Atlanta, and give the local charge by each line upon first-class freight.

A. There are two lines between Cincinnati and Atlanta, the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Western & Atlantic R. R, compose one line, and the Cincinnati, New Orleans and Texas Pacific railroad and the East Tennessee, Virginia & Georgia railway, compose the other. The intermediate rates are Cincinnati to Chattanooga, 76c., Chattanooga to Atlanta, 57c., making a total of $1.33, but the joint rate is $1.07. There is only one line between Atlanta and Augusta, the Georgia railroad, and its local rate is 64c., making the sum of the locals $1.71.

Q. 9. What is the rate by rail from Baltimore to Augusta, and what is the rate by rail from Baltimore to Atlanta?

A. The rate from Baltimore to Augusta by way of all rail is 96c., to Atlanta, $1.14. The rates by partly water and partly rail
181 lines are 89c. to Augusta and $1.07 to Atlanta, and it is by the latter line that the principal portion of the traffic is carried.

Q. 10. What is the distance from Cincinnati to Atlanta by rail?

If the rate from Cincinnati to Atlanta is $1.07, and from Atlanta to Social Circle 30c., what is the inequality in the rates with reference to the difference in distances? What proportion are the rates to each other with reference to the distance?

A. Four hundred and seventy-four miles by the shortest line. It has been the custom of railroads from the beginning to the present the propriety I have never heard questioned, that in making tariffs for non-competitive traffic, or for competitive traffic, where the competing lines run in substantially the same direction, that while the rates would be increased with the distance, the rate of increase in the rate should be in inverse ratio to the increase in the distance. Thus the rate from Cincinnati to Chattanooga is 76c. for 336 miles, and $1.07 for 474 miles to Atlanta. The competitive lines running in substantially the same direction, while the rate to Augusta is no more than to Atlanta, because the competition at that point comes from a directly opposite direction and not only prevents an increase in the rate to Augusta, but also reduces the rate to Atlanta, below the sum of the locals to Atlanta by the direct line in order to put Atlanta on an equality with Augusta. The standard tariff of the railroad commission of Georgia makes a rate of 30c. for fifty miles, and a rate of 95c. for four hundred and fifty miles. The relation of the rate for 474 miles of $1.07, and the rate for fifty miles of 30c., while substantially the same, is slightly in favor of the former, as with the rate of increase adopted by the commission, the larger rate being $1.07, the smaller rate must have been more than thirty cents.

Q. 11. You stated in your direct examination that the discriminating against Social Circle was imperative. For what reason is it imperative? Is it not true that the demand for revenue makes it imperative? If there is any other reason state it.

A. The demand for revenue is a very potent factor, so far as the railroad is concerned, but the rates as now adjusted are not
182 the result of accident, nor of the arbitrary actions of railroad officials. They have been made after repeated conferences between the railroads and their patrons, and are really adopted more to meet the demands of commerce than the necessities of railroads. As I have before stated, Atlanta and Augusta are practically located equidistant from Cincinnati. They are also the termini of the Georgia railroad. Social Circle is more *distance* (distant) from Cincinnati than either. If the lines terminated at Atlanta declined to meet the competition at Augusta, there would be no discrimination at Social Circle in the present rates. It is clear then that the only ground upon which the charge of discrimination against Social Circle can be based, is the fact that the lines by way of Atlanta meets (meet) the rate made by water competition to Augusta. So far as this is concerned, Augusta is also discriminated against by the fact that the same line works through Augusta to Charleston at a rate of 95c., to meet water competition at that point. This restricts the territory in which Augusta could trade both on the South Carolina, Port Royal and Central roads, as the same rate is made to Savannah by way of Macon. Now if the rate to Social Circle is made the same as to Augusta, then it is entirely cut off

from all territory on the Georgia railroad, of which it has now one-half in competition with Atlanta. But if the rate to Georgia railroad stations are made the same as to Augusta, then its water competition results in injury to the trade of Augusta and in benefit to the stations on the Georgia railroad. I think this forms a reason quite outside of the revenues of the railroad why the present discrimination against Social Circle shall be continued. By a commercial custom which has stood the test of centuries, unquestioned, the merchant buying goods in large quantities pays a less price than another merchant who buys in small quantities; as rates are now arranged, the merchants of these cities can sell goods to the merchants in the towns on the Georgia railroad near enough to what the cost would be if purchased in Cincinnati to induce the country merchant to buy in southern markets. Now the purchaser in Cincinnati pays the same freights as the purchaser in Atlanta or Augusta; as for instance, the Atlanta mer-
183 chant pays $1.07 and the Social Circle merchant 30c., while the Social Circle merchant buying in Cincinnati pays $1.37. But if the change is made, the purchaser in Cincinnati will get his freight at 30c. per hundred cheaper than the purchaser in Atlanta or Augusta; this would be enough to drive the business to Cincinnati. This would increase the profits of the Cincinnati merchant, who would sell more small bills at higher prices, but it takes all the profits of the Augusta and Atlanta merchants, and increases the profits of the Social Circle merchant. In other words, this readjustment would give the advantage of the competition of Atlanta and Augusta to the Social Circle merchants, and take away from the merchants at the competitive points an advantage which they have enjoyed, by reason of their location as competitive points. The effect on the revenues of the railroad would be the same as though it was forced to get goods by wagon to a town ten miles from Social Circle, which had no railroad facilities, at Social Circle rates, a loss in net revenue, the difference being that one resulted from paying out money and the other by receiving a less amount. The discrimination against Social Circle by this course would be more apparent than the proposed discrimination against Atlanta and Augusta, but would not be any the less real. If the removal of this discrimination must increase the profits of the Cincinnati merchant, to the injury of the merchants in Georgia cities, I think justice to the State of Georgia makes it imperative that roads in Georgia, and especially a road owned by the State of Georgia, without regard to its effect on the revenue of the railroad, shall not be forced to a readjustment of rates that inevitably must produce this effect.

Q. 12. Now, if you state that in the ordinary transaction of commerce, the greater the purchase of goods the less rate is charged. Can you state whether this rule would apply say to the purchase of postage stamps, in a post office? The regulation of duties on imports, or the payment of tolls at a mill, all of which are regulated by law?

A. As I understand the law, the same rate shall be paid by all without regard to quantity.

184 Q. 13. Now, if this be true, what is the reason for it?

A. I don't know any good reason for it. It is the law and must be obeyed.

Q. 14. Do you know how or by whom the rates from Cincinnati to Augusta, Georgia, by any of the lines by way of Baltimore, either rail or water, or both, are fixed?

A. They are fixed in both directions by the Southern Railway and Steamship Association. The only lines outside of the association, which participate in the business, are the Baltimore & Ohio, which gets its full local rate, and the boats on Savannah river, which gets whatever it pleases, which is not subject to any regulation by law.

Q. 15. Who fixes the rates from Baltimore to Atlanta?

A. The Southern Railway and Steamship Association.

Q. 16. From Baltimore to Augusta?

A. The Southern Railway and Steamship Association.

Q. 17. In a shipment from Cincinnati to Augusta on a through bill of lading, with reference to the stations of Social Circle and the city of Augusta, which is the short haul and which the long haul?

A. If the freight is carried through Augusta, then Augusta is the short haul and Social Circle the long haul. If it is carried through Atlanta, then Augusta is the long haul and Social Circle the short haul.

Q. 18. If the rate to Augusta is $1.07 per hundred on a shipment from Cincinnati to Augusta, and on a like shipment to Social Circle the rate is $1.37 per hundred pounds, is not that a greater charge for the short haul than for the long haul? What is the distance by rail from Cincinnati to Baltimore? What is the distance by water from Baltimore to Savannah? What is the distance by rail from Savannah to Augusta?

A. It is if the freight is carried from Cincinnati to Augusta by way of Atlanta; if carried by way of Augusta it is not. The distance — Cincinnati to Baltimore is five hundred and ninety-three miles. I am not certain as to the actual distance by water, but to the best of my recollection it is about six hundred miles. It is 132 miles by rail from Savannah to Augusta.

185 Q. 19. What is the estimated transportation distance by a route described in a line given from Cincinnati to Augusta, allowing the usual reduction for waterway?

A. Cincinnati to Baltimore five hundred and ninety-three miles; actual all rail. Baltimore to Savannah, water, estimated rail miles two hundred. Savannah to Augusta, rail, one hundred and thirty-two, total nine hundred and twenty-five.

Q. 20. What is the distance from Cincinnati to Augusta by Atlanta?

A. Six hundred and forty-five miles.

Q. 21. What are the competitive points between Cincinnati and Augusta via Atlanta? State them and the railroads that carry the competition to each point and the distance between said points.

A. The competitive points are Chattanooga and Atlanta. I have

already named the railroads in answer six (6). The distances by the shortest lines are Cincinnati to Chattanooga, three hundred and thirty-six miles; Chattanooga to Atlanta, one hundred and thirty-eight miles; Atlanta to Augusta, one hundred and seventy-one.

Q. 22. Is there a line of steamers always plying between Savannah and Augusta? What is the rate per hundred pounds, first-class, on said steamers?

A. According to the best of my recollection, there were several steamers plying on the Savannah river at the time these rates were made. At present there is only one steamer plying between Savannah and Augusta. I do not know what rates are charged, but they are varied, at the will of the owners or captain of the boat, to suit circumstances, or conditions, being restrained neither by law nor by the demand of shippers by the same boat that they shall be put on an equality.

Q. 23. You stated substantially in your direct examination that railroads take competitive business to increase their revenue, and that it was by this increased income they were enabled to reduce their local rates. Will you mention an instance in railroad management in Georgia where a reduction of local rates was given strictly and exclusively on account of the increased revenue from through business? Give the time, the point, and the amount of reduction.

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A. What I stated was that when the revenue derived from competitive and non-competitive business exceeded the amount necessary to pay the expenses of operating, which of course include maintainance and a fair return on the investment the roads would be enabled to reduce their non-competitive rates. From 1865 to 1879 there were very few roads in Georgia that earned enough to pay any dividend, and as far as I know none that had any considerable surplus over 7 per cent. dividend. There was, therefore, no opportunity offered for a reduction of local rates solely from this cause. Yet it is a well-known fact to all who gave the matter any attention, that the local rates were very much reduced during this period. In many cases the adoption of competitive rates forced the reduction at local stations near to competitive points, for the reason that unless such reductions were made, it would be practicable for shippers to ship to the competitive point and back to the non-competitive point cheaper than to the point direct, and this reduction forced reductions at other non-competitive points and often over the entire line. In fact, during that period the influence that would be *exacted* (exerted) on local rates was often considered in determining as to whether new competition should be met. In making the standard tariff in 1879, the Georgia railroad commission reduced all or nearly all the local rates in Georgia, and in my opinion discounted the reductions that would otherwise have been made for many years. I draw this conclusion from the fact that there has been no considerable reduction of non-competitive rates since that time, though the competitive business is largely increased, and yet no road in Georgia, so far as I know, has accumulated any considerable surplus

from their earnings, nor have any paid extravagant dividends on the value of the property estimated at the actual cost.

Q. 24. Is it not true that in transportation what is lost on traffic at competitive points, where competition is keen, is made up by high rates at intermediate points, unless restrained by law?

187 A. The competition which has been so keen as to justify a reasonable suspicion that it resulted in actual loss to the carriers, has always, so far as I know, been temporary and entered into to accomplish a definite purpose, that of forcing lines to charge the rates they had agreed with their competitors to charge, and had published as the existing rate; exactly the same purpose which was a leading object of the interstate commerce law. Like that law, while it failed to wholly eradicate the evil of making secret reductions from published rates, it did exercise a wholesome effect upon it. But if losses were known to be the inevitable result of this competition, it was never expected to recoup such losses from the local traffic. It was known that however desirable that the recoupment might be, the lower rates at the competitive points made it for reasons shown in my answer to question twenty-three (23), rendered it impracticable to advance local rates, because the low rates extended the influence of competition still further into the local territory, and while on account of the anticipated temporary existence of the low rate, it was deemed unadvisable to change the local rates, there never was, to my knowledge, any attempt to advance any local rates on account of this competition. If, at any time, such rates to competitive points as would result in loss to the carrier have been made for the purpose solely of adding to the traffic of the corporation, I am sure the officers of the railroad did not know of the loss, and hence made no effort to recoup.

Q. 25. What is the amount of each share of Georgia railroad stock, and value of the same per share for the last ten years?

A. I have not been an officer of the Georgia railroad, nor a shareholder, nor have I dealt in stocks for the last ten years. I know the par value of the stock as $100.00 per share, but I do not know its present market value.

Q. 26. What dividends, if any, has the Georgia railroad paid for the past ten years, and for the ten years prior to 1881?

A. I do not know.

JOHN B. PECK.

188 *Testimony of Mr. Sol. Haas, of Atlanta, Ga.*

Q. 1. State your name, age, residence and occupation.

A. Sol. Haas, age 49, Atlanta, Ga., traffic manager of the Richmond & Danville railroad.

Q. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time.

A. Since 1869, as soliciting freight agent, general freight agent and traffic manager.

Q. 3. State whether or not the phrase, "under substantially sim-

lar circumstances and conditions," as connected with the railroad transportation of passengers and property in the United States was at and prior to February 4, 1887, a railroad traffic term.

Counsel for plaintiff here states that he desires to be understood as objecting to all questions in this examination on the line of inquiry indicated by question third, as above, as seeking to elicit answers irrelevant and incompetent.

Counsel for defendant agrees that the above objection may be considered as made by counsel for plaintiff, not only to the above question, but to all other questions of similar import, whether addressed to this witness or to any other witness.

A. I do not remember that the exact phrase as stated was in common use, but phrases, the import of which were the same, were in use.

Q. 4. Please explain fully how, or in what respect, if at all, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted.

A. To answer this question intelligently it will be necessary to give illustrations, as for example, the rates of freight from New York to Augusta are constructed on the basis of rates from New York via Charleston or Savannah by water, thence by rail to Augusta. Under normal conditions of transportation these rates would naturally be the ocean rates from New York to Charleston or Savannah, plus the rates from Charleston or Savannah to
189 Augusta; but transportation lines between Savannah and Augusta on the Savannah river become an element differing the circumstances and conditions, so that the rates from New York to Augusta are fixed so as to enable the lines first named to compete with the lines via the Savannah river. Thus we have a rate fixed from New York to Augusta by what is termed a short line, the transportation or prorating distance being 382 miles, to wit: 250 miles by water and 132 miles by rail. The lines operating from New York through the Virginia ports to Augusta form another element of transportation, the transportation or prorating distance via Norfolk or West Point, being about 675 miles, of which 160 miles is ocean transportation. Notwithstanding these differing circumstances, the lines through the Virginia ports do compete with the shorter lines through Savannah and Charleston. There are also rail lines transporting freight between New York and Augusta, the distance by these lines being about 800 miles. In this case the circumstances and conditions vary from both the instances before referred to. The water lines having marine insurance and breakage of bulk at the port before completing their transportation to Augusta, enables the rail lines, who have no insurance, and have continuous transportation, to secure a higher rate than the ocean and rail lines; the value of the service they render differing the circumstances and conditions to such an extent as to enable them to secure a higher rate. A point 20, 30 or 50 miles east of Augusta has a higher rate from New York than Augusta has. At such points the circumstances and

conditions are again dissimilar, in that the elements controlling the rates at Augusta are altogether different from those at the stations above referred to. In other words, the differing circumstances and conditions makes the transportation between New York and Augusta less valuable to the shipper than to the shipper at the station 20, 30 or 50 miles east of Augusta.

Q. 5. You have stated that the short route from New York to Augusta is 382 miles long, while the long route is about 800 miles long. Suppose the long route should charge a materially higher rate from New York to Augusta than is charged by the
190 short route, what effect, if any, would it have upon the amount of transportation that the long route would do between New York and Augusta?

A. It so happens that in the instance cited, the long line performs the most valuable service to the shipper, for the reasons given in my previous answer. The additional charge made by the long line in this case is measured absolutely by the additional value of its service. If it attempted to charge one cent per one hundred pounds above its value, as compared with the water and rail lines, it would of course, get no business. It may be well to explain that it is not the longer distance that makes the service more valuable, and if the positions were reversed, the rail and water lines being the longer, it would not materially affect the circumstances and conditions spoken of in the answer to the previous question.

Q. 6. What is the rate charged by the short route of 382 miles from New York to Augusta on first-class goods, and what is the rate charged by the long route of 800 miles between the same points, on the same class of goods?

A. I do not recall the rate charged on first-class goods between New York and Augusta by the short line, but eight cents per hundred pounds has been fixed as the difference of value between the all rail and the rail and water lines.

Q. 7. Now then, suppose that the rail lines from New York to Augusta should attempt to charge ten cents per hundred pounds, on first-class freight, more than the rate charged by the water and rail lines, what effect, if any, would it have upon the transportation that would be done by the rail lines?

A. If the measure of value is the correct one, that is to say, eight cents higher by the rail line on first-class freight than by rail and water, the rail line would of course be unable to secure business on a difference of ten cents.

Q. 8. How has the difference of eight cents between all-rail lines and the mixed water and rail lines been arrived at or agreed upon? I mean by what process has that precise difference been settled upon?

A. By the experience of years it is believed to be a just
191 and reasonable difference of the value of the service performed by these lines, many of the rail lines claiming that the difference is too much; the water lines claiming that the difference is too little.

Q. 9. So far as competition may affect the circumstances and con-

ditions under which the transportation of property is conducted, what difference is there, if any, whether the competition is by rail or by water, or by part rail and part water?

A. Where competition exists it makes no difference whether it exists by rail, or by water, or by rail and water, or by all combined. Wherever there is competition the circumstances and conditions are likely to be different.

Q. 10. Please explain fully how or in what respect, if at all, the existence of competition between market and market, or between product and product, affects the circumstances and conditions under which the transportation of property is conducted.

A. It is found necessary to recognize the existence of competition between markets. For example, the rate from Richmond, Virginia, on manufactured tobacco to New Orleans is controlled by the rates from Richmond to New York by water, and from New York to New Orleans also by water. To enable the interior manufacturer of tobacco to successfully compete with the Richmond market, it is necessary that the interior shipper, whether he be located at a competitive or a local station, should have practically the same rate as the shipper from Richmond. The competition between markets being less at Montgomery than at New Orleans, the Montgomery rates are made higher than the New Orleans rate. This is one of many examples that might be given. Where one product becomes competitive with another, the circumstances and conditions enabling the transportation of one to compete with the other must depend entirely upon the market value of each at the point of consumption, or of both of them. For example, the value of oats in the grain-producing sections of the world has a fixed value in its relation to corn. Should the rates on either be made higher than the other,
that product having the higher rate would have less com-
192 mercial value at the point to which it is to be transported,
and the transportion of that product having the higher rate would be entirely lost.

Q. 11. Suppose that buggies, carriages and other wheel vehicles can be profitably manufactured in Baltimore as low as they can be in Cincinnati, and suppose the rates from Cincinnati to Augusta on buggies should be materially higher than the rate from Baltimore to Augusta on buggies, what effect, if any, would the difference in rates have upon the carriers between Cincinnati and Augusta as to the number of buggies they would get to transport?

A. I should say that unless the Cincinnati manufacturer were willing to sell at less than cost of production, that the carriers between Cincinnati and Augusta would have no vehicles to transport.

Q. 12. Please state whether or not there is more than one line which can practically compete for traffic between Cincinnati and Atlanta, and if you say that there is more than one line, state all of the various lines and give the names of the railroads or rivers, or other water lines, forming parts of such lines as can practically compete between Cincinnati and Atlanta.

A. There are so many lines that can compete between Cincinnati and Atlanta that I may omit some. Those that occur to me are

the Louisville & Nashville road via Chattanooga, in connection with both Western & Atlantic and East Tennessee, Virginia & Georgia, the Queen & Crescent via Chattanooga by both W. & A. and E. T., V. & G.; also the L. & N. and Q. & C. via Paint Rock and the Richmond & Danville; also via L. & N. and Q. & C. via Birmingham and the Georgia Pacific; also via L. & N. and Q. & C. via Chattanooga; Chattanooga, Rome & Columbus to Cramer and the Georgia Pacific; also by the various lines through Memphis and Chattanooga in connection with the lines already mentioned, and from Memphis via the Birmingham and Memphis road to Birmingham in connection with the Georgia Pacific; also by the various steamboat lines reaching Memphis in connection with the rail lines already mentioned, and the Pennsylvania railroad through
193 Alexandria in connection with the R. & D.; the Baltimore & Ohio railroad through Strausburg, Virginia, in connection with the R. & D., and the Chesapeake & Ohio railroad through Lynchburg in connection with the R. & D.; also by the trunk lines through the North Atlantic ports, thence by water through the South Atlantic ports.

Q. 13. State whether or not there is more than one line which can practically compete for traffic between Cincinnati and Augusta; and if you say there is more than one, please state all of the lines that can practically compete between those points, and state the different railroads, etc., that compose the various lines?

A. I think that all of the lines referred to in the last question can transport to Augusta, and in addition thereto the lines through Macon and Millen and via Montgomery, in connection with the Alabama Midland, Savannah, Florida & Western to Savannah, thence to Augusta.

Q. 14. State whether or not the rates made between local stations on railroads in the State of Georgia are made by the railroad companies in Georgia or by the railroad commission of Georgia. Explain this fully, please.

A. No rate can be legally effective without an order of the commission.

Q. 15. Please state what, in your opinion, would be a reasonably low rate on first-class freight, in less than car-loads, from Cincinnati to Atlanta, considering all the circumstances and conditions that affect the transportation between those two places?

A. In all the discussion of rates between Cincinnati and Atlanta, it was thought that the rate applying from Baltimore to Atlanta should fix the rate from Cincinnati to Atlanta, and *vice versa*, on first class. This is considered reasonable and fair to both markets, and is made about $1.07 per hundred pounds, possibly $1.08 per hundred pounds.

Q. 16. What do you consider would be a reasonable rate on first-class freight, in less than car-load, from Atlanta to Social Circle, fifty-two miles east of Atlanta?

A. I consider the rate fixed by the Georgia commission, 30 cents per hundred pounds, reasonably low enough for any purpose.

194 Q. 17. It is much farther from Cincinnati to Atlanta than it is from Atlanta to Social Circle. You have stated that you thought that $1.07 per hundred pounds was reasonable from Cincinnati to Atlanta, and yet that 30 cents per hundred pounds was reasonable from Atlanta to Social Circle. Please explain why you think that both rates are reasonable, notwithstanding the difference in distance?

A. The circumstances and conditions are entirely different at Atlanta and Social Circle in many respects. The value of the service to the shipper at Atlanta is worth less than it is to the shipper at Social Circle. The competition of the markets at Social Circle is less than the competition of the markets at Atlanta.

Q. 18. State whether the rates made or approved by the Georgia railroad commission to control the Georgia railroads increase in all instances according to distance, or if there is any exception to that rule state under what condition and circumstances the exceptions are made.

A. The general rule is for the rates to increase according to distance; the exceptions are made under their rule six, which is filed to my deposition as Exhibit I. I give a few instances where the general rule is departed from. The rate from Savannah to Albany, Ga., is 64 cents per hundred pounds for first class, the distance by the short line being 208 miles. The rate from Savannah to Forresters, by the Central railroad, 293 miles, is 88 cents per hundred pounds for first class. The rate from Columbus, Ga., to Dawson, Ga., 66 miles by the Columbus Southern road, and 90 miles by the Central Road of Georgia. The rate on fertilizer, as authorized by the Georgia commission, is $1.35. The rate from Columbus to Bromwood, on the Central railroad, 7 miles north of Dawson, 84 miles from Columbus, is $1.70. There are many other instances of like character which I do not now recall to mind, but which, with time to get the exact figures, could be given.

Q. 19. Do I understand you to state in your last answer that in making the rates referred to therein the carrier is per-
195 mitted by the commission to charge more for a shorter distance than a longer distance over the same line in the same direction?

A. Yes, sir. For example, the distance by the Central railroad from Savannah to Albany is 299 miles, while to Forresters, an intermediate station, the distance is 293 miles. For instance, the roads are permitted to charge a less rate from Brunswick and Savannah to Atlanta, Rome, Macon, Columbus, Augusta than to intermediate stations, but, as stated before, I do not remember the exact rates.

Q. 20. What is the difference between the circumstances and conditions affecting the transportation between Savannah or Brunswick and the other cities named in your last answer, and the circumstances and conditions affecting the transportation between Savannah and Brunswick and the stations intermediate between those cities and the other cities?

A. The circumstances and conditions vary perhaps in each case,

or rather at each point. At Macon I think the rate is largely governed from Savannah by the shorter distance from Brunswick. At Augusta by the competition of the Savannah river, and also by the competition from Charleston; at Rome doubtless the competition from Chattanooga controls the rates from Savannah and Brunswick, so that it may be fairly taken that at each of the points it is a question of competition between markets in the State, as well as between markets in the State and from without the State, and in all cases the value of the transportation to the shipper. While at the intermediate points the circumstances and conditions are altogether dissimilar and are not controlled to the same extent by competitive forces.

Q. 21. Would or not, under the practice of the commission, a higher rate be allowable upon a shipment from Savannah to Jonesboro' than upon another shipment of like goods of like kind through to Atlanta, Jonesboro' being a point on same railroad intermediate between Savannah and Atlanta, and if so, what difference is there in the circumstances and conditions of the two shipments making that difference allowable?

A. A lower rate is authorized by the commission from Savannah to Atlanta upon like kind of property than from Savannah
196 to Jonesboro'. The reasons for this is obvious. The rate from Savannah to Atlanta is worth no more to the shipper than the rate from Brunswick or Charleston, either of which places reach Atlanta under precisely the same circumstances and conditions as the other and which they cannot do at Jonesboro', the circumstances and conditions at Jonesboro' being altogether dissimilar and the value of the service performed to Jonesboro' greater than that performed at Atlanta.

Cross-examination by Mr. DARNELL:

Q. 1. In the conduct of the transportation business over railroads and steamship lines in this country what is the application of the phrase "under substantially similar circumstances and conditions"?

A. Chiefly the circumstances and conditions which fixes the value of transportation to the customer who needs it.

Q. 2. What is meant by the phrase "value of service" as used by you in your answers in direct examination?

A. For example, a buyer of property intended for transportation seeks various markets for his purchases. If the value of the article in one market is higher than the difference in freight at another market he must of course go to the market for these purchases where the cost of the article plus the transportation charges are the least, or if the cost of the article plus the transportation charges are the same in various markets, he knows in either case the value to him of the transportation charges he must pay. Again, if the producer of cotton cloth in Georgia seeks a market in the Northwest for this production he is met with competition of the eastern manufacturer. The price that the Georgia manufacturer with

reasonable profit can sell his product in Chicago with the transportation charges added is no higher than the price of the same product delivered by the eastern mill to the dealer in Chicago; therefore, the value of the transportation to the producer of cotton cloth in Georgia is limited to the difference in price at the Georgia mill and at the eastern mill plus the transportation service.

Q. 3. What is the relation between the phrase "value of service" and "cost of service" in the transportation business?

197 A. The relation of cost of service to value of service is very difficult to define. The cost of service is fixed. In some cases transportation for long distances may be done at less cost than for short distances, circumstances and conditions varying this rule. The cost of transportation does not always control in arriving at the value of transportation to the shipper. If the value of transportation be, as it sometimes is, less than the cost, other things are to be considered besides the mere cost of transportation of the property then offered. It might involve the closing of his mill, or the shutting up of his mine, were the transportation lines to refuse in such cases to transport at or even less than cost. The indirect considerations sometimes are so much more valuable to the shipper that he will sell his product at or less than cost rather than stop his mill or mine; and for the same reasons the carrier will transport at or even below cost. It is a well-known fact that almost any article produced commands a higher price at or near the point of production than it does at a more distant point, less the transportation charges, where the competition for the same product may be greater; hence it follows that the producer must sell cheaper to get rid of his surplus product, and the transportation company must carry cheaper should such an emergency arise as above indicated.

Q. 4. You have stated by way of illustration that the Georgia railroad commission, in fixing tariff rates authorizes a greater proportionate rate to be charged on first-class freight from Savannah to Jonesboro' than from Savannah to Atlanta. How would this illustration apply under the same conditions if the shipment was made from Savannah on a through bill to Marietta 20 miles beyond Atlanta and on a different line of road?

A. The rate from Savannah to Marietta would be charged the rate from Savannah to Atlanta plus the local rate from Atlanta to Marietta, the reason being that at Marietta the value of the service to the customer is greater than the value of the service to Atlanta, because it passes over two lines of road to reach Marietta and because the circumstances and conditions at Marietta make the service more valuable. To illustrate still further, a shipment from

198 Savannah to Atlanta in transit to Marietta does and should pay the same rate from Atlanta as if consigned by a local merchant at Atlanta to Marietta. The value of the service between Atlanta and Marietta of the shipment from Savannah to Marietta is worth no more or less to the Marietta receiver of the property, or to the Savannah shipper than it is when shipped from Atlanta local.

Q. 5. Is not the tendency of this rule to discriminate against com-

paratively small and intermediate cities and towns in favor of large cities regarded as centers of business?

A. It is unquestionably a discrimination against such places as you indicate, but that it is an unreasonable discrimination I do not believe. As a rule, the larger cities or trade centers, as you call them, are built up because of the competition that nature or their own moneyed investments, or the competition of markets which they are enabled to control, by reason of their location or competition in transportation, have built themselves up upon the principle that all these circumstances combine to make transportation cheaper and less valuable to them than to those places not so favorably situated.

Q. 6. Would this rule apply to an interstate shipment, say from Chattanooga to Jonesboro'?

A. Yes, sir; it does apply.

Q. 7. When you refer to rule No. 6 of the Georgia State commission as having fixed certain rates, and made certain exceptions, does your statement relate to local or through shipment rates, or both, whether shipments within the State or interstate, so far as that commission is authorized to regulate rates within the State?

A. I understood the question in reference to rule 6 to have reference only to shipments originating and ending within the State.

Q. 8. What is the rate, first-class freight, from Baltimore to Atlanta?

A. I think it is $1.07, or 8 cents.

Q. 9. The rate from Baltimore to Augusta first-class freight being 89 cents, what is the reason for the difference?

A. The rate to Augusta from Baltimore is made as high
199 by what we know as the regular transportation lines; that is; by the ocean lines to Savannah and rail to Augusta, as the competition by the Savannah river will admit, hence Augusta has an apparently lower rate than Atlanta—the distance, however, to Atlanta being 171 miles greater than to Augusta.

Q. 10. What is the reason for fixing the rate first-class freight, say from Cincinnati to Augusta, Georgia, at $1.07, and the same rate being charged on first-class freight from Cincinnati to Atlanta, Ga., the distance being 171 miles less, and shipments being made on through bills?

A. You will notice that the difference in rates between Cincinnati and Augusta and Cincinnati and Atlanta is very much less than the difference in rates between eastern cities and Augusta and eastern cities and Atlanta. In first class the rates to Augusta are the same as to Atlanta—made so because it is the intention to enable Cincinnati to compete with Baltimore upon equal terms; but as you near the coast the conditions are so changed as to make it impossible to give Cincinnati as low rates as Baltimore, just as you would find it impossible, under the changing circumstances and conditions, to give to Baltimore the same rates as from Cincinnati when we near the Ohio river.

Q. 11. In the ordinary and natural transaction of business between Cincinnati, Ohio, and Atlanta, Ga., or Augusta, Ga., or points

between the two last-named cities in Georgia, what competition in business have the railroads involved in this suit?

A. At Augusta and Atlanta on this particular question we have the competition of markets, as well as the competition between the transportation companies. In both of these cases it happens that if the property was purchased in Cincinnati going to Augusta, the lines from Baltimore to Augusta would get none of the transportation, while if it was purchased for Atlanta at Cincinnati, the line between Atlanta and Baltimore would not be able to transport it. If bought from Baltimore say to be shipped to Augusta, the Georgia road could not compete for it, and if bought at Baltimore for Atlanta the lines leading west from Atlanta could not compete for it. While
if purchased at either Baltimore or Cincinnati for Social Circle
200 the Georgia road would transport it either from Augusta or
Atlanta.

Q. 12. Would this condition of competition be either natural or legitimate?

A. I think it would be both natural and legitimate. Were it otherwise, the law creating the Interstate Commerce Commission would have no value. There would be no rates that Cincinnati might have that Baltimore would know, and no rates that Baltimore would have that Cincinnati would know. The basis of rates, whether to what has been termed business centers or the smaller intermediate stations, commonly known as local stations, must have relative rates from the various points of production or distribution, based upon commercial values both as to the article to be shipped and transportation charges, and these rates must be known to shippers at each point.

SOL. HAAS.

(EXHIBIT No. 1.)

Rules Governing the Transportation of Freight.

Rule 6. Regulations concerning freight rates.—The freight rates prescribed by the commission are maximum rates, which shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent. at all stations along the line of road, so as to make no unjust discrimination as against any person or locality.

But when there are between any two points in this State two or more competing roads not under the same management or in the same system, then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between
said two points below the standard tariff, without making a
201 corresponding reduction at all stations along the lines of said
roads: Provided, said reduction shall not make the rates less than the standard tariff rates for the shortest line between said

points: Provided further, that before taking effect, the proposed change of rates shall be submitted to and approved by the commission.

Testimony of J. M. Culp, of Atlanta, Ga.

Q. 1. State your name, age, residence and occupation.

A. J. M. Culp; 43 years next birthday; Atlanta, Ga.; assistant traffic manager Richmond & Danville railroad.

Q. 2. State how long you have been connected with the railroad-traffic business, and the various capacities in which you have been since your connection.

A. Between 21 and 22 years, as bill clerk, rate clerk, in general freight office, chief clerk in general freight office, assistant general freight agent and general freight agent; these with the Louisville & Nashville railroad. As assistant traffic manager with the Richmond & Danville railroad.

Q. 3. State the most important circumstances and conditions which affect the transportation of property by railroads in the territory south of the Ohio and Potomac rivers, and east of the Mississippi river.

A. The cost of transportation service, the value of the transportation service and competition of at least three kinds: 1st. The competition between carriers. 2d. The competition of one market with another or others. 3d. The competition of product with another product that may be converted to the same use.

Q. 4. What is meant by the cost of transportation service?

A. The cost of transportation service may be said to be what it costs the carrier to perform that service.

Q. 5. What is meant by the value of transportation service?

A. By the value of transportation service, I mean its worth to the party for whom it is performed.

202 Q. 6. Explain and illustrate the effect of competition between carrier and carrier.

A. As an illustration: The rate on fertilizers as fixed by the Georgia railroad commission from Columbus, Ga., to Dawson, Ga., was by the Central R. R. of Georgia—$1.76 per ton. When the Columbus Southern R. R. was built, the rate from Columbus to Dawson by that line was made $1.35, and the Central R R. of Georgia was forced to meet that rate or surrender the traffic. It did meet that rate and is now using it.

Q. 7. What is the distance from Columbus, Ga., to Dawson, Ga., by the Central R. R., and what is the distance by the Columbus Southern?

A. The distance from Columbus to Dawson via the Central R. R. is 91 miles; this distance is through Americus and Smithville. The distance from Columbus to Dawson by the Columbus Southern is 66 miles.

Q. 8. When the Central R. R. reduced its rates on fertilizers from Columbus to Dawson, as above stated by you, were the rates on fertilizers on that road from Columbus to points intermediate, between that place and Dawson, all reduced to the through rate?

A. The rates from Columbus to stations on the Central R. R., between Columbus and Dawson, remained higher than this rate of $1.35 to Dawson, where they had previously been higher.

Q. 9. State whether or not the Georgia R. R. commission has approved or recognized the Central R. R.'s charging more on fertilizers to said intermediate stations, than it charges through to Dawson.

Question objected to because the testimony of the witness is not the best evidence of the action of the Georgia railroad commission.

A. It has, both by general order of permission and in interview between the traffic manager of the Richmond & Danville railroad and myself, and members of the commission a few weeks since.

203 My recollection is that Col. Trammel and Mr. Powers were present. Rates adopted on this basis have been issued by approval of the commission; the approval in writing, as I understand it.

Q. 10. Was the result of the interview, to which you have just alluded, reduced to writing by the commission, so far as you know?

A. It was not, so far as I know.

Q. 11. Will you file as Exhibit No. 1 to your deposition a duly certified copy of the general order referred to in your answer to question 9?

A. I will, if I can get it certified to.

Q. 12. Please file as Exhibit No. 2 to your deposition a copy of the tariff showing the rates referred to in your answer to question No. 9, which you say have been issued by approval of the Georgia railroad commission?

A. I will, if I can obtain them, which I have no doubt I can. They are with the Central Railroad of Georgia.

Q. 13. Please explain and illustrate the effect of competition between market and market?

A. The distance from Chicago to Cincinnati is about 300 miles; the distance from Cairo to Chicago is 365 miles; the distance from Chicago to Evansville, by the shortest line, is 287 miles. Notwithstanding the differences in distance, the rates from Chicago to all of these points are the same. This is one illustration. Second. The rate from Cincinnati to Atlanta, on first-class, $1.07, made the same as from Baltimore to Atlanta. Third. For a long time the only line carrying traffic from Evansville to Atlanta was the Louisville & Nashville railroad. No other line competed for the traffic to Atlanta from Evansville, Ind., with the Louisville & Nashville railroad, yet the competition of markets produced the same rates from Evansville to Atlanta, as from Cincinnati to Atlanta. Fourth. Quite recently a reduction of rates on certain cotton-factory products from cotton mills in Georgia to Chicago, Indianapolis and other points, has been adopted, owing to the competition from New England mills; the rates from Atlanta, Augusta, Macon and other points to

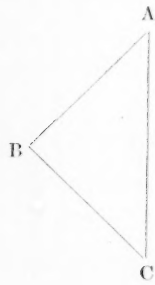
204 Chicago being made the same as from New England mills to Chicago—50 cents per 100 pounds. Many other illustrations could be cited showing this competition of markets.

Q. 14. Please explain and illustrate the effect of competition of product with product.

A. White pine is a product of Michigan, and perhaps other territory contiguous to Chicago. Yellow pine is not. In fixing rates on yellow pine from points in Georgia, Alabama, etc., the competition with the white pine in Chicago has been an element in fixing the rates to Chicago. In fixing rates on coal, I have known the abundance and consequent cheapness of firewood in the section to be supplied with the coal, to produce lower rates on coal than would, in my opinion, have been made, except for this abundance of wood.

Q. 15. Please look at the diagram marked Exhibit No. 3, to your deposition.

EXHIBIT No. 3.



Suppose the line A C to represent a railroad 100 miles long. Suppose the line A B C represents a railroad 150 miles long. Suppose the short line A C establishes a rate on first-class traffic of 50 cents per 100 lbs., and suppose the line A B C cannot, or will not, meet or approximate that rate. What will be the effect upon the volume of first-class traffic that will be carried by the long line between A and C?

A. In my opinion the volume of traffic carried by the long line under these conditions would amount to little or nothing. The
205 distance from Cincinnati to Chattanooga by the short line is 336 miles. The distance via the longer line, the Louisville & Nashville R. R. and Nashville, Chattanooga & St. Louis railway is 446; the longer line is, and has been compelled to meet the rates of the shorter line, in order to obtain any share of the traffic between Cincinnati and Chattanooga.

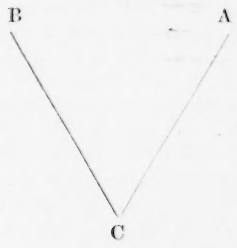
Q. 16. Suppose the Georgia R. R. commission had refused to allow the Central R. R. to meet the rate of the Columbus Southern R. R. on fertilizers from Columbus to Dawson, referred to in your 6th answer; what effect would that refusal have had upon the amount of fertilizers that would have been carried by the Central R. R. from Columbus to Dawson?

A. I think the effect would have been to prevent the Central R. R. from carrying any fertilizers between Columbus and Dawson, so

long as the Columbus Southern R. R. could have transported all offered for shipment.

Q. 17. Please look at the diagram here filed as Exhibit No. 4 to your deposition and suppose that A and B represent cities where

EXHIBIT No. 4.



corn is sold at the same price in the market. Suppose C to be a city to which corn is shipped for consumption from A and B. Suppose A C to represent one line of railroad and B C to represent another line of railroad; suppose the line A C reduces the rate on corn from A to C, and that the line B C cannot or will not meet or approximate that rate. What will be the effect upon the volume of corn that will be carried by the line B C from B to C?

A. With no difference in the conditions, except in the price
206 of corn at the two points A and B, the line B C would carry little or none of the corn.

Q. 18. Please look at the diagram here filed as Exhibit No. 5 to your deposition.

EXHIBIT No. 5.

Suppose that O is a city located in (a) territory where oats are produced. Suppose that C is a city located in a territory where corn is produced. Suppose that D is a city located in *the* (a) territory where both corn and oats are consumed. Suppose that corn, as an article of feed, is twice as valuable as oats. Suppose that C D is a railroad which carries corn from C to D at 10 cents per bushel. Suppose that O D is a line which carries oats from O to D at 5 cents per bushel, and suppose these relative rates, as between corn and oats, have been maintained by those two railroads respectively for a

number of years. Suppose then that the line C D should reduce the rate on corn from C to D and the line O D could not, or would not, make any reduction in the rate on oats from O to D, what would be the effect upon the volume of oats that would afterwards be carried by the line O D?

A. If the reduction in the rate on corn from C to D were sufficient to make the relative value of the corn at D less than that of oats, at D, coming from O, based upon a rate of 5 cents, it would have the effect to reduce, or, perhaps, stop the movement of oats from O to D.

Q. 19. What, in your opinion, is a reasonably low rate on first-class goods, in less than car-loads, from Cincinnati to Atlanta? And give your reasons for any opinion you may express.

207 A. I consider the present rate of $1.07 on first-class goods in less than car-loads, Cincinnati to Atlanta, a reasonably low rate. This is my opinion because the rate of $1.07 is lower, or as low, as the property can be moved by other modes of transportation. It enables, and has enabled, property to be moved to a large extent from Cincinnati to Atlanta. It permits shippers in Cincinnati to ship first-class goods to Atlanta in competition with other markets similarly situated.

Q. 20. How long has that rate been in force?

A. For a number of years. My recollection is that with the exception of a very short time, if any, the rate has been in force for about eight years.

Q. 21. State how many lines of transportation, if any, actually compete for traffic between Cincinnati and Atlanta. Number the lines 1, 2, etc., and give the names of the railroads composing each line.

A. At least six lines.

No. 1. The Cincinnati, New Orleans & Texas Pacific, from Cincinnati to Chattanooga, thence via the East Tennessee, Virginia & Georgia railway to Atlanta.

No. 2. The Cincinnati, New Orleans & Texas Pacific, from Cincinnati to Chattanooga, thence via the Western & Atlantic to Atlanta.

No. 3. The Cincinnati, New Orleans & Texas Pacific, from Cincinnati to Chattanooga, thence via the Central railroad of Georgia to Kramer, Ga., thence via the Georgia Pacific railway to Atlanta.

No. 4. The Louisville & Nashville railroad from Cincinnati to Nashville, thence via the Nashville, Chattanooga & St. Louis railway to Chattanooga, thence via the Western and Atlantic R. R. to Atlanta.

No. 5. The Louisville & Nashville R. R. from Cincinnati to Nashville, thence via the Nashville, Chattanooga & St. Louis railway to Chattanooga, thence via the East Tennessee, Virginia & Georgia railway to Atlanta.

No. 6. The Louisville & Nashville R. R. from Cincinnati to Nashville, thence via the Nashville, Chattanooga & St. Louis rail-
208 way to Chattanooga, thence via the Central R. R. of Georgia to Kramer, Ga., thence via the Georgia Pacific railway to Atlanta.

Q. 22. If there are, in addition to the lines mentioned in your last answer, any other lines, either all rail, or part rail and part water, which have heretofore in times past competed for traffic between Cincinnati and Atlanta, please state said lines, numbering them 1, 2, etc., and give the names of the railroads, or of the railroads and steamship lines, or river lines, composing such routes?

A. The following line, which I will designate as No. 1, has in past years competed for traffic from Cincinnati to Atlanta.

No. 1. The Kentucky Central railway from Cincinnati to Livingston, Ky.; thence via the Louisville & Nashville railroad to Jellico, Ky., thence via the East Tennessee, Virginia & Georgia railway through Knoxville, Tenn., to Atlanta, Ga.

No. 2. Several years ago the Chesapeake & Ohio railroad competed for traffic from the West to Atlanta, and my impression is that it did this in connection with the Richmond & Danville railroad. I am not prepared to say whether it actually advertised itself for traffic from Cincinnati to Atlanta, by printed tariffs or otherwise, without referring to records.

Q. 23. What is the rate on first-class goods from Cincinnati to Baltimore, via rail?

A. 62 cents per 100 pounds.

Q. 24. What proportion of a through rate from Baltimore to Atlanta do the steamship companies accept for transportation from Baltimore to Savannah or Charleston on first-class freight?

A. They receive, up to Savannah, a percentage based upon mileage of 250 miles. The percentage is 46 per cent. which, after deducting allowance for insurance and wharfage and terminal, allows steamer 41.9 cents per 100 pounds out of rate of $1.07.

Q. 25. What rate is allowed by the Georgia railroad commission to be charged by railroads on first-class freight from Savannah to Atlanta?

209 (Objected to on the ground that the testimony of the witness is not the best evidence of the action of the Georgia railroad commission.)

A. Sixty-nine cents per 100 pounds.

Q. 26. What rate on first-class goods is charged by steamboats or can be obtained on steamboats from Savannah to Augusta?

A. I am not prepared to say.

Q. 27. State what transportation lines, if any, actually compete between Cincinnati and Augusta, numbering the lines 1, 2, etc., and giving the names of the various railroads which compose said lines.

A. There are at least 13 lines that compete from Cincinnati to Augusta.

No. 1. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the East Tennessee, Virginia & Georgia railway to Atlanta, thence via the Georgia railroad to Augusta.

No. 2. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the East Tennessee, Virginia

& Georgia railroad to Atlanta, thence via the Central Railroad of Georgia to Augusta.

No. 3. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the Western & Atlantic railroad to Atlanta, thence via the Georgia railroad to Augusta.

No. 4. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the Western & Atlantic railroad to Atlanta, thence via the Central Railroad of Georgia to Augusta.

No. 5. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the Central Railroad of Georgia to Kramer, Ga., thence via the Georgia Pacific to Atlanta, thence via the Georgia railroad to Augusta.

No. 6. Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga, thence via the Central Railroad of Georgia via Kramer, Newnan and Macon to Augusta.

Nos. 7, 8, 9, 10, 11 and 12 via the Louisville & Nashville railroad from Cincinnati to Nashville, thence via the Nashville, Chat-
210 tanooga & St. Louis railway to Chattanooga, thence by the respective lines above named to Augusta.

No. 13. From Cincinnati to Harriman Junction via the Cincinnati, New Orleans & Texas Pacific, thence to Paint Rock via the East Tennessee, Virginia & Georgia railway, thence to Augusta via the Richmond & Danville railroad.

Q. 28. What rate is allowed by the Georgia railroad commission from Savannah to Augusta on first-class freight.

(Objected to because the testimony of the witness is not the best evidence of the action of the commission.)

A. The Georgia commission allows a rate of 46 cents per hundred pounds on first-class freight to be charged from Savannah to Augusta.

Q. 29. Please file as Exhibits Nos. 6 and 7, respectively, to your deposition, duly certified copies of the tariffs allowed by the Georgia railroad commission referred to in your answers Nos. 25 and 28.

A. I will, if I can, do so.

Q. 30. State what, in your opinion, would be a reasonable rate on first-class goods from Cincinnati to Augusta, and give your reasons for any opinion you may express.

A. I am not prepared to state what would be the reasonable rate from Cincinnati to Augusta. I consider the present rate of $1.07 not more than a reasonable rate. My reasons for this opinion are that the rate is not more than the value of the service; that it enables the shippers at Cincinnati to sell and ship goods to Augusta to a certain extent; that so far as I am advised there is not any other mode of transportation at this time by which the service is performed more cheaply.

Q. 31. What, in your opinion, would be a reasonable rate on first-class goods from Atlanta to Social Circle, Georgia? And state your reason for any opinion you may express.

A. I answer that I am not prepared to state the reasonable rate on first-class goods from Atlanta to Social Circle, but in my opinion, the rate of 30 cents as fixed by the Georgia commission, is not more than a reasonable rate. First, because it is as low or lower
211 than the service can be performed by other modes of transportation. Second, it is not more than is charged for the same distance between points similarly situated with respect to competition within the State of Georgia by the authority of the Georgia railroad commission. Third, it is not more than the value of the service performed for the parties for whom performed. Fourth, because upon the traffic of the Georgia railroad taken at this rate and at other rates supposed to be adjusted with relative fairness to each other, and at the highest rates that can be obtained upon the competitive business, that road does not earn more than, if as much, as a reasonable return upon the investment.

Q. 32. What effect has a rate of 30 cents from Atlanta to Social Circle, or of $1.37 from Cincinnati to Social Circle, as a discrimination for or against Social Circle in favor of or against Atlanta or Augusta, the rate from Cincinnati to Atlanta and from Cincinnati to Augusta being $1.07 on same class of freight?

A. In my opinion the rate of 30 cents from Atlanta to Social Circle, and the rate of $1.37 from Cincinnati to Social Circle, as against a rate of $1.07 per 100 pounds on first class from Cincinnati to Atlanta and from Cincinnati to Augusta, have no injurious effect upon Social Circle, and make no unjust discrimination against Social Circle. Social Circle receives up to Atlanta the advantage of the competition which Atlanta receives. I have given my reasons for believing the rate of $1.07, Cincinnati to Atlanta, and the rate of 30 cents, Atlanta to Social Circle, on first-class goods, not more than reasonable rates. The value of the service from Cincinnati to Social Circle is, in my opinion, worth $1.37 to the parties for whom the service is performed. Merchants in Cincinnati can compete at this rate with merchants from other points not dissimilarly situated. I state, as my opinion, that a reduction in the rate of $1.37 from Cincinnati to Social Circle would not result in any increase of the traffic received by Social Circle. A reduction from Cincinnati, without relative reductions from other points, might enable merchants in Cincinnati to increase their sales and shipments to Social Circle at the expense of other markets, but not increase the traffic received at Social Circle.

212 Q. 33. What is the distance from Cincinnati to Birmingham by the shortest route? What is the rate on first-class freight from Cincinnati to Birmingham, and why was such a rate put in force?

A. Four hundred and seventy-nine miles; 89 cents per 100 pounds, first-class freight. This rate of 89 cents from Cincinnati to Birmingham was adopted because of reduction in value of the service from Cincinnati to Birmingham on account of the establishment of a rate of 75 cents per 100 pounds from Memphis to Birmingham by the Kansas City, Memphis & Birmingham railroad.

Q. 34. What difference is there between water competition and

rail competition, as to their respective effects upon the transportation of freight?

A. My experience and observation have been that competition of water carriers usually results in lower rates than competition between rail carriers. The former is more difficult to be successfully met by the rail carriers because of the irregularity in the rates of the water carriers; because of the fact that they may, and do frequently change their rates, sometimes several times in a day; and that the water carriers are not confined to any given water points for any length of time, but may change their base of operation from one water-course to another, or from the route between two given points to that between other points, etc., on the same water-course.

All of the foregoing deposition was seasonably objected to on the part of the petitioner for irrelevancy, incompetency and immateriality.

Cross-examination:

1 Q. You *are* asked to state the most important circumstances and conditions which effect the transportation of property by railroad in the territory south of the Ohio and Patomac rivers, and east of the Mississippi river. You replied that those circumstances and conditions were the cost of transportation service, the value of the transportation service, and competition of at least three kinds; have all of those circumstances and conditions affected the transportation of property by railroads in that territory, during the past ten years?

213 A. Yes.

Q. 2. The question required you to answer the most important circumstances and conditions affecting the transportation of property within the territory. Do any circumstances and conditions, other than those named, now occur to you, which affect or have affected the transportation of property in that territory?

A. The action of the State commissions has also affected the transportation in the matter of rates; what principles govern those commissions I am not prepared to say. Those I have given are the only general circumstances and conditions that occur to me.

Q. 3. In your experience as a practical railroad man, and having as I suppose to deal with the question of making and fixing rates, which one of these considerations, that is to say, the cost of service, the value of the service to the shipper, or competition, have you found to be the most controlling in the fixing of rates?

A. Competition to a large extent, fixes the value of the service to the shipper. It is therefore chiefly the value of the service to the shipper, that is to say, what he can afford to pay, and will pay, which most largely affects the adjustment of rates.

Q. 4. Then you think the cost of service is largely subordinated to the other elements by carriers and making rates for transportation, do you?

A. In general practice, yes; although I do not believe that rail-

roads often, if at all, carry freights for less than it actually costs to transport that freight as between carrying it and not carrying it.

Q. 5. Suppose a railroad line 200 miles in length extends from station A to station B, and at each terminus of the line there is produced a commodity which finds a market at an intermediate station C, there being no element of competition to be considered, if station C is exactly midway between A and B the rate from A to C and B to C ought to be the same, ought it not?

214 A. If all of the other conditions were similar, I think that would be the proper adjustment.

Q. 6. And if I understand your testimony, it is to the effect that if station C is nearer to B than it is to A, on account of what is termed competition in the market, the railroad company is justified, in your opinion, in still making the same rate from A to C as from B to C?

A. If the difference in the distance from A to C and B to C was material, thereby making a material difference in the cost of the service from the further point to C, there being no other competition from other roads, I think it would be proper, and it is in accordance with the general practice, to charge a higher rate for a longer distance; distance cannot always be and is not always ignored in the adjustment of rates. All of the circumstances and conditions affecting the transportation should be considered by the traffic manager or rate-maker in adjusting rates of freight.

Q. 7. As a practical question, is it not your experience in the case last supposed that where C is nearer to B than it is to A, that the same rate is given to C from A and from B so long as the rate from A to C is fairly remunerative to the carrier?

A. That is not my observation or experience. If a railroad could make a tariff, without regard to competition, or to the proximity of any other line, its rates would be graduated according to distance; as the distance increased, the unit of distance producing an increase in the rate would also be increased; for illustration, under 100 miles the unit of distance producing an increase in the rate would be five or ten miles; over 100 miles it would increase probably to 20 or 25 miles; over 200 miles a further increase, etc., and these rates for distance would be applied over the line. My education in the freight department of railroads is that this is the basis on which rates would be, and are adjusted, and it is only when the value of transportation to the shipper or parties for whom it is performed is lessened by competition that this graduated scale of rates is varied from.

Q. 8. My question presupposed that the transportation related to a commodity produced at A and B, which found a market at

215 C, C being nearer to B than to A; if I understand your last answer, you eliminate from the subject the competition in the market at C, which I had understood you to say had some effect upon the rate. Is it not the fact that in making a rate for a commodity finding a market at an intermediate point, produced at both ends of the line, on account of that competition, it is customary to continue to give the same rate to the intermediate stations until a

point is reached where the rate for the longer distance ceases to be fairly remunerative?

A. No, sir; it is not. It may happen that the rate from A to C, the longer distance, will be as low as from B to C, but I endeavored to indicate in my answer to the former question, No. 7, how this could be. I will give an illustration. Suppose the distance from A to B is 225 miles; the distance from A to C is 124 miles; the distance from B to C is 101 miles; under the unit of distance, say 25 miles, there would be no difference in the rates from A to C and B to C. The competition of markets affects the rates to a great extent where a market is served by one railroad or several railroads, and another market is served by another railroad or several other railroads. If the adjustment of rates from the one market is such as to fix a value of service to the party desiring to ship, (who may use either of the markets) at less than the rates in effect from the other market, the lines from that other market must reduce their rates to the value of the service to the shipper or they cannot expect to participate to any great extent, if at all, in the traffic to be shipped to point of consumption.

Q. 9. Are we to understand then that competition in the markets or of market with market does not affect the making of rates unless more than one carrier is interested in the traffic?

A. In the illustration which you have used, not to the extent, if at all, that it does in the illustration which I will give. Assume one line to be built between two given points 200 miles distant, these two points designated as A and B. Grain is produced at A, but not at points in the direction of and including B. Rates are adjusted from A to B upon the gradually ascending scale.
216 After awhile it is commenced to produce grain at B, so that consumers are able to purchase grain raised at B at a price less than the cost price at A plus the freight rate to B. The value of the service from A to B is at once lessened; the market B producing grain for sale comes in competition with the market A, at B, certainly the railroads must reduce its rate from A to B so that added to the price at which the grain can be purchased at A it can be sold at B at practically the same price at which the grain produced at B is sold at that point, or its transportation of grain from A to B must be entirely abandoned or materially reduced.

Q. 10. Suppose the line from A to B to be 200 miles, and the prearranged unit of mileage to be 25 miles, and the question of rates wholly unaffected by the competition of other carriers, C being an intermediate point, is 26 miles nearer B than it is A, at A and B a commodity is produced which finds a market at C. Is it not your experience that on account of the competition the market at C for a commodity produced at A and B, the carrier may charge the same sum, reasonably, from A to C, that it does from B to C, provided the rate from A to C is fairly remunerative. I mean to exclude all considerations except those stated in this question?

A. That is not my experience or observation.

Q. 11. Then, and in such case, competition in the market, such as you have described cuts no figure in the making of rates from A to C; is that your understanding?

A. Competition of markets, like all other kinds of competition, is recognized by railroads for the purpose of securing the transportation of a share of the traffic to be moved. I think it hardly probable that railroads would recognize competition of any kind if they could ignore it and still secure a reasonable and profitable traffic at the rates adjusted without regard to competitive forces. Therefore, if the railroad could secure the haul from B to C it would not reduce its rate from A to C, the cost of transportation from A to C being more than B to C, or presumably so, (the distance being greater), thus lessening its net revenue. The rates from A to
217 C being fair and reasonable in themselves, and the rates from B to C being fair and reasonable in themselves.

Q. 12. In the case supposed in question, suppose the rate from A to C on grain was greater, according to the prearranged increase for the mileage unit, would not the fact of the greater rate from A to C compel the carrier to abandon the business of hauling grain from A to C, the common market of A and B?

A. Shippers at A would either have to take less for their property to the extent of the difference in rates, or not sell it at all. In practice, however, on a line, such as described, non-competitive with any other line, or without any other competing conditions A would sell to those points on the line to which the rates from A were lower than from B, and B would sell to those points on the line the rates to which from B were lower than from A.

Q. 13. And in such case, your idea is that the carrier would ignore in fixing a rate for C, the fact of competition in the market at C and make its rate upon the schedule of graduated mileage, of which you have spoken, would it not?

A. Yes.

Q. 14. Referring now to the illustrations given in reply to question six of the direct examination, what rate per ton could the Central Railroad of Georgia make upon fertilizers to be transported from Columbus to Dawson without carrying the traffic at a loss?

A. I am not able to state. It is perhaps practicable to take the total results of past business for a given period and arrive at an approximate average cost per ton per mile on that business. I do not believe it is practicable to fix the approximate cost per ton per mile over each particular mile of road. It is not practicable, in my opinion, to say what it will cost per ton per mile to haul freight on a given road today, or tomorrow, or in the future. A road can afford to carry business at a rate of freight which if it does not make it will not transport the business at all, which rate would be much less than the average cost of transportation.

Q. 15. If I understand the Columbus-Dawson situation, it
218 is this: Your road was charging $1.76 per ton for fertilizers between Columbus and Dawson. The Columbus Southern R. R., which had a line between the same points, reduced its rate to $1.35, and thereupon you, as one of the officers of the Richmond & Danville system, applied to the Georgia commission and obtained permission to put your rate at $1.35, to meet that rate by the rival carrier. Am I right about that?

A. $1.76 is the rate which the Central R. R. of Georgia is permitted to charge from Columbus to Dawson on fertilizers by the tariff of the railroad commission of Georgia, fixed by that commission for the Central R. R. When the Columbus Southern R. R. was built, or subsequent thereto, it made a rate of $1.35 per ton from Columbus to Dawson. Under general orders or permission of the Georgia commission, which are embraced in, I believe, circular No. 6, the Central R. R. of Georgia made its rate from Columbus to Dawson $1.35, without reducing its intermediate rates. In a conference some weeks since, between the traffic manager of the Richmond & Danville R. R. Co., then operating the Central R. R. of Georgia, and myself, as assistant traffic manager, and the railroad commission of Georgia, in regard to a revision of fertilizer rates on the Central R. R., the use of this $1.35 rate from Columbus, Ga., to Dawson, Ga., by the Central R. R., was referred to and verbally approved by the railroad commissioners. A schedule of rates from Columbus, Ga., to points on the Central R. R. was, immediately following this interview, prepared and submitted to the railroad commission of Georgia for its approval. Whether any change in the rates from Columbus to stations on the Central R. R, intermediate between Columbus and Dawson, from the rates theretofore in effect was made, I am not able, without referring to the records in my office, to state. Among the rates as submitted to the railroad commission of Georgia and returned by the honorable commission as approved, are the following from Columbus to stations intermediate between Columbus and Dawson, which are higher than the rate from Columbus to Dawson: To La Crosse, Ga., $1.38; to Smithville, Ga., $1.60; to Bronwood, Ga., $1.71.

219 Q. 16. It was the desire of your company, was it not, in view of the competition, to put into effect the rate of $1.35?

A. It was; to secure a portion of the fertilizers from Columbus to Dawson, in competition with the competing carrier—the Columbus Southern.

Q. 17. And you considered the $1.35 rate to be fairly remunerative, did you not?

A. It was considered that, as between not carrying and carrying it, it was profitable.

Q. 18. Had the Columbus Southern reduced its rate to a point below where it would have been considered to be profitable, would your company have taken the measures that it did to secure the traffic?

A. No. And I will add if the making of the $1.35 rate for 91 miles, via the Central railroad from Columbus to Dawson had entailed a rate of $1.35 for all distances of 91 miles on the Central railroad, with corresponding reductions for other distances, the Central railroad would have withdrawn from competition for fertilizers between Columbus and Dawson at $1.35, because, in my opinion, it could not have afforded to make the reduction, or rather stand the loss of revenue caused by the reduction. In any event the loss to the Central railroad from the surrender of the entire shipment of fertilizers from Columbus to Dawson would have been insignificant

compared with the loss resulting from a corresponding reduction all over the line.

Q. 19. In regard to the rates from Chicago to Cairo, Evansville and Cincinnati, which you say are the same, have you any personal knowledge as to what motives induced carriers to ignore the difference in distances in establishing those rates?

A. In years of contact with the officials of the railroads between Cairo and Chicago, Evansville and Chicago and Cincinnati and Chicago, in correspondence passing between them and myself, in my official capacity, as general freight agent of the Louisville & Nashville R. R., in attendance at the various meetings of representatives of the lines extending from the various points on the Ohio river named, to Chicago, I learned that they regarded the
220 competition of markets as between Cincinnati and Evansville, and Cairo, with respect to Chicago, such as to result in an agreement between those lines that the rates between the respective points on the Ohio river named and Chicago should be uniform.

Q. 20. In that traffic do you know of any other similarity of condition and circumstance, other than what you have termed competition in the market? In all other respects the traffic between those points would be carried on under substantially dissimilar circumstances and conditions, would it not?

A. The difference in distances between Chicago and Cincinnati and Chicago and Evansville is small, about 13 miles. The difference in distance between Cincinnati and Chicago and Cairo and Chicago is about 65 miles. The difference in the distance between Evansville and Chicago and Cairo and Chicago is about 78 miles. In these respects there is a dissimilarity. Between Cincinnati and Chicago there are several routes competing for traffic. Between Evansville and Chicago there is only one road which carries the traffic to any important extent. Between Cairo and Chicago, my recollection is, that the number of routes competing for the traffic is less than between Cincinnati and Chicago. From this it appears that there is a dissimilarity in competition outside of the markets. There may be similarity in the cost of service, but I am not able to state as to that.

Q. 21. Notwithstanding the fact that the competition of carrier or carriers is greater in the case of the Cincinnati-Chicago traffic than the Cairo-Evansville traffic, is the result that an equal rate is given from all of these points into Chicago?

A. Notwithstanding that there are more competing lines between Cincinnati and Chicago than between Evansville and Chicago, and as I am able to recollect, fewer competing lines between Cairo and Chicago than between Cincinnati and Chicago, the rates are the same between the three points, Cincinnati, Evansville and Cairo and Chicago.

Q. 22. As a practical question, at this time, rates of transportation upon traffic passing over the lines of two or more carriers, are fixed by agreement of the carriers through the mediation of the different railroad associations, are they not?

221 A. The agreements between a large portion of the carriers on a large portion of the competitive business are reached between the lines in association. Agreements as to fixed rates between a portion of the lines, on a portion of the business, are not made by those lines in association.

Q. 23. You have stated that there are six competing lines between Cincinnati and Atlanta, and thirteen between Cincinnati and Augusta; notwithstanding the very great difference in the number of competitors for the business, the rates from Cincinnati to Atlanta, and from Cincinnati to Augusta, I understand you to say, are the same on first-class freight?

A. Yes.

Q. 24. Are any of these thirteen carriers, to your knowledge, in the Cincinnati market underbidding each other as to freight rates from Cincinnati to either of the points named in Georgia?

A. I said thirteen lines, not thirteen carriers. In the Cincinnati market they are not from day to day underbidding each other to any great extent. Much of the competition is had by the rate-making representatives of the different carriers in the meetings for the adjustment of rates. One carrier may want to fix the rate at a certain price, with or without regard to some competition; another may want to fix at another price lower, another still lower, etc. The result is sometimes the lowest rate which a carrier insists upon being made, (believing that the competition is such as to warrant that rate) is adopted. Sometimes it may happen that the intermediate rate may be adopted. It is possible that the highest rate may be adopted, although looking back over a number of years, during which I have attended many meetings at which rates were fixed upon in this way, I don't recall any instance in which the highest rate was fixed, although, doubtless there have been such instances. I do know that in majority of cases either the lowest rate or some intermediate rate is fixed upon, and I state as my firm conviction that the legitimate effect of the competition, without the ruinous effect of the competition, is obtained in this way. Therefore, I do say that these lines from Cincinnati do underbid each other, in the way I have explained. I further state that I

222 have known in the past one line from Cincinnati to express its desire to have certain rates made, and upon the failure of the one or more of the other competing lines to give its assent to those desired reduced rates, the line so desiring has reduced the rates, forcing the competing line or lines to meet that rate or surrender the business; now, one of the lines from Cincinnati to certain points in the South, to Columbus, Ga.

(Answer objected to as not responsive to the question.)

Q. 25. My question related to your knowledge as to whether any of the different carriers between Cincinnati and Atlanta and Augusta were underbidding each other in the market at this time, or have they been during the past six months, by offering to shippers reduced rates for transportation between Cincinnati and Augusta, or Atlanta?

A. Not to my knowledge.

Q. 26. And is it not true that the different carriers between Cincinnati and Atlanta and Augusta, making up the 13 routes, from Cincinnati and Augusta, are under agreement with each other not to take first-class freight in less than car-load lots for less than $1.07 per 100 pounds?

A. They are, so long as that rate is not reduced in competition with other markets or with carriers from other points, or in competition with each other in formal manner.

Q. 27. Are not the different carriers under agreement as to this rate, through the medium of the traffic association to maintain the present rate, and will not the present rate be maintained until formal action is taken by the association, or the carriers or some one or more of them withdraw from the association agreement?

(Counsel for defendants requests the examiner to require the witness to state whether the agreement is in writing, which is referred to in the last question, and if the witness shall say that the agreement is in writing, counsel for defendants object- to the witness stating the terms or effect of the agreement, and insists that the agreement or a copy of it shall be produced. He is willing that a copy may be introduced.)

Counsel for plaintiff consents to the instructions.

223 A. Either written or printed, I can't say which.

(Petitioners' counsel waives the question and gives notice to the counsel for the defendant-, in open court, to produce all agreements on the part of the defendants with any of the carriers mentioned by the witness, relating to the subject-matter of the fixing of rates, between the points named.)

(Defendants' counsel in reply to said notice says that the petitioner, The Interstate Commerce Commission, has been already furnished with copies of all such agreements. Neither of the defendants has the original.)

Q. 28. You have testified that the important circumstances and conditions which affect the transportation of property by railroads are the cost of service, the value to the shipper, and competition of at least three kinds. Is it your experience that those circumstances and conditions, so called, have been factors in the making of rates during all the many years you have been in the railroad business?

A. Ever since I have had connection with the fixing of rates, they have been important factors. I have been connected with the rate-making for over ten years.

Q. 29. And during all the ten years, at least, this matter of competition between carriers, market and market, product and product, has prompted the carriers, in some instances, to make a greater rate for the shorter haul, has it not?

A. The carriers have usually met the competition where they found it and as far as it extended, but not always, and the results have been the charge, in many instances, of higher rates for the

shorter distances than for longer distances, or to put it more properly, lower rates for the longer haul than the shorter haul.

Q. 30. In making these greater rates for the shorter haul, the question of cost of transportation was necessarily eliminated, was it not?

A. The cost of transportation in making rates to meet competition has usually been considered only as fixing a minimum below which the carriers would not make rates in meeting the competition.

224 Q. 31. To make my meaning more clear, have you known of any of the carriers to make a lesser rate for the longer haul, except in the presence of competition?

A. I think not. If there have been any such instances, I cannot recall them.

Q. 32. Quite generally, at a time, say five years ago, all the carriers, so far as you know, recognized the principle that competition of the various kinds, of which you have spoken, affected the making of rates, and it was then a general custom, was it not, for the carriers, on that account to make the lesser rate for the longer haul?

A. The carriers in this section did, say five years ago, recognize competition as affecting freight rates, and where this reduced the rates over the longer haul, such reduction was not followed by a reduction of the intermediate rates to the longer-haul rates as a maximum to a greater, probably not as great, a relative extent as now.

Q. 33. Do you recall the fact that a single carrier did not give, at that time, in some instances, a lesser rate for the longer haul?

A. Not in this section.

Q. 34. And it was then the general practice with all carriers, as far as you know, in recognition of the principles concerning which you have testified, to give this lesser rate for the longer haul, was it not?

A. Yes, in this section.

Q. 35. You mean by this section the territory south of the Potomac and Ohio and east of the Mississippi rivers, do you not?

A. Yes.

Q. 36. In stating the different routes from Cincinnati to Atlanta and Augusta, there are only two lines from Cincinnati to Chattanooga, one by the Queen & Crescent and the other by the Louisville & Nashville and Nashville, Chattanooga & St. Louis railway, are there not?

A. Those two lines are the chief lines.

Q. 37. And from Chattanooga to Atlanta there are only three lines?

225 A. Only three lines.

Q. 38. From Cincinnati to Atlanta, the different lines which you have testified are composed of these same carriers, are they not?

A. Yes.

Q. 39. If you should ascertain that Mr. Miller, the traffic manager of the Queen & Crescent, had testified within the past three

weeks, that at the present time traffic from Cincinnati does not find its way from Cincinnati to Georgia points by way of rail from Cincinnati to the northeastern seaboard, and thence by rail or steamer and rail to interior points in Georgia, would you yield your opinion to his, or would you consider him to have been mistaken if he made such a statement?

A. I am not aware that I have directly or indirectly, by inference or otherwise, stated that business was moving or had recently moved from Cincinnati to interior points in Georgia through the routes named in the interrogatory.

Q. 40. All of these facts, which you have testified to, as bearing upon the subject of making rates were of common knowledge among railroad men during the year preceding the first of July, 1891, were they not?

A. It is certainly my belief that they were with all rate-making officials of railways, familiar at that time with the traffic of this section.

Q. 41. And had the defendants desired to have shown those facts to the Interstate Commerce Commission while the case was being considered by that commission, it would have been a very easy matter for them to have done so, not only by yourself, but by the many others familiar with the subject, would it not?

(Counsel for the defendants objected to the question because it submits to the witness a question of law.)

A. I cannot say how easy it would have been. My testimony could have been obtained. I am not prepared to say what other testimony could have been obtained.

J. M. CULP.

226 (EXHIBIT No. 1.)

Rule 6. Regulations concerning freight rates.—The freight rates prescribed by the commission are maximum rates, which shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service, carry for the same lessened rate for all persons, except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent. at all stations along the line of road, so as to make no unjust discrimination as against any person or locality.

But when there are between any two points in this State, two or more competing roads, not under the same management, or in the same system, then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between said two points below the standard tariff, without making a corresponding reduction at all stations along the lines of said roads; provided, said reduction shall not make the rates less than the standard tariff rates for the shortest line between said points; provided, further, that before taking effect, the proposed change of rates shall be submitted to and approved by the commission.

I certify that the above is a true copy of rule No. 6 of the rules governing the transportation of freight, as adopted by the railroad commission of Georgia.

A. C. BRISCOE, *Secretary.*

Atlanta, Ga., April 5th, 1892.

(PART 2, EXHIBIT No. 1.)

The railroad commission of Georgia.

I certify that the rate of one dollar and thirty-five cents (per ton) was the regular rate allowed to be charged by the Columbus Southern Railroad Company on fertilizers in car-load lots, between Columbus, Ga., and Dawson, Ga., prior to the 15th day
227 of March, 1892. Under rule No. 6, of the railroad commission, the Central Railroad of Georgia was authorized to apply the same rate between said points.

A. C. BRISCOE,
Secretary Railroad Commission of Georgia.

(EXHIBIT No. 2.)

From Columbus, Ga., to—	Per ton, 2,000 pounds. Fertilizers, C. L.
Muscogee, Ga.	$ 61
Ochillee, Ga.	88
Halloca, Ga.	94
Cherokee, Ga.	99
Glen Alta, Ga.	1 05
Zelobee, Ga.	1 10
Buena Vista, Ga.	1 16
Doyle, Ga.	1 21
Putnam, Ga.	1 27
Ellaville, Ga.	1 32
La Crosse, Ga.	1 38
Bronwood, Ga.	1 71
Smithville, Ga.	1 60

This is to certify, that the above rates are a true copy of rates between points named, approved February 23rd, 1892.

A. C. BRISCOE, *Secretary.*

April 5, 1892.

228 (EXHIBIT No. 6.)

I endeavored, on April 5th, to obtain a certificate from the railroad commission of Georgia that sixty-nine (69) cents per 100 pounds was the rate which that commission allowed the railroads to charge from Savannah to Atlanta on first-class goods, but was unable to procure such certificate. L. N. Trammell, chairman of the commission, stating that while the commission had issued no authority for a rate of sixty-nine (69) cents from Savannah to Atlanta on first-

class goods, it would issue that rate if applied to, upon a showing that sixty-nine (69) cents was the rate from Charleston to Atlanta on first-class goods. I file herewith, marked "Exhibit A," pages 312 and 313 of the tariff of the Southern Railway and Steamship Association, which association includes in its membership all the rail lines competing for traffic between Atlanta and Savannah. Said tariff is entitled "R. C. Circular No. 39, Series 1891–'2," and shows the rate of freight on first-class goods to be from Charleston and from Savannah to Atlanta sixty-nine (69) cents per 100 pounds. Said tariff was filed with the railroad commission of Georgia by the Southern Steamship and Railway Association, and I saw it in the tariff files of the railroad commission of Georgia on April 5th, 1892. I have never heard of the railroad commission of Georgia making any objection to said tariff, and the rates in said tariff have been charged, including the rate of sixty-nine (69) cents on first-class goods from Savannah to Atlanta, without any objection having been made by said commission thereto, so far as I have ever heard.

(Here follows insert marked pages 229 & 230.)

231 (EXHIBIT No. 7.)

I endeavored, on April 5th, to obtain a certificate from the railroad commission of Georgia that 46 cents per 100 lbs. was the rate which that commission allowed the railroads to charge from Savannah to Augusta on first-class goods, but was unable to procure such certificate. L. N. Trammell, chairman of the commission, stated that while the commission has issued no authority for rate of 46 cents from Savannah to Augusta on first-class goods, it would issue that rate, if applied to, upon a showing that 46 cents was the rate from Charleston to Augusta on first-class goods. I have filed as part of Exhibit No. 6 to my deposition pages 312 and 313 of the tariff of the Southern Railway & Steamship Association, which association includes, in its membership, all of the rail lines competing for traffic between Augusta and Savannah. Said tariff is entitled "R. C. circular No. 39, series 1891–'2," and shows the rate of freight on first-class goods from Charleston and from Savannah to Augusta to be 46 cents per hundred pounds. Said tariff was filed with the railroad commission of Georgia by the Southern Railway & Steamship Association, and I saw it in the tariff files of the railroad commission on April 5th, 1892. I have never heard of the railroad commission making any objection to said tariff, and the rates in said tariff have been charged, including the rate of 46 cents on first-class goods from Savannah to Augusta, without any objection having been made thereto by said commission, so far as I have ever heard.

232 *Testimony of P. J. McGovern, of Atlanta, Ga.*

Q. 1. State your name, residence, age and occupation?

A. Name, P. J. McGovern; residence, Atlanta, Ga.; age, thirty-

and Cincinnati would have very few buggies to haul, would they not?

A. That would be the effect of making the rate from Cincinnati to Atlanta higher than from New York to Atlanta. You understand that the rate on buggies from Cincinnati to Atlanta is actu-lly less than the rate from New York to Atlanta.

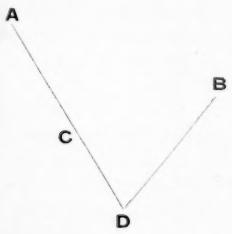
252 Q. 54. And it is that so-called business principle, which induces the carrier to make or rather adjust the rates from Cincinnati accord-(with) reference to rates from New York?

A. Yes, sir; it is the principle of competition.

Q. 55. Competition between market and market, or competition between carriers?

A. Both.

Q. 56. Referring to the diagram handed you, suppose the letters, A B C D represent four different places, A D to represent a line of communication between those points passing through C, and B D another line of communication. Suppose the property to be transported to be coal and that the coal produced at A and B would be precisely of the same quality, and that the distance from A to D is greater than from B to D. Suppose that the carrier over the line B D makes a certain rate on coal, and the carrier managing the line A D makes a rate to meet the rate of line B D, in order to introduce the coal produced at A into the market at D. The coal from A passing through C on its way to D. In your estimation is the transportation by the line A D of coal from A to C, terminating there, and coal from A passing through C to D conducted under substantially dissimilar circumstances and conditions?



A. Most assuredly there you have the whole thing in a nutshell. The line from A to D must recognize a reduced value of service because of the competition with the coals mined at and shipped from B. It is self-evident that if the rate charged from A to D be greater than the rate charged from B to D no coal will be

253 shipped from A; hence, if the rate from B to D, as applied from A to D, is believed to yield the carrier from A to D a profit above the actual cost of service, then, and in that case, it is entirely reasonable that the rate from A to D shall be fixed regardless of the rate charged from A to C, so long as the latter rate is reasonable in itself.

Q. 57. You have said that the rate from A to D "is believed to

yield a profit;" the same rate to C, a shorter distance, would yield a greater profit per ton per mile, would it not?

A. Yes, sir; it would.

Q. 58. If a railroad company, operating the line A D should decide upon a lower rate to D for the reasons which you have stated, than it gave to C for the transportation of coal, the shipper of coals to C would be at a disadvantage as compared with shipper at D, would he not?

A. The consumer of coal at C would be at a natural disadvantage as compared with the consumer at D, because he would not have the benefit of the competition existing at D. The shipper of coal would not be at any disadvantage, as the consumer must pay the rate of freight; in fact, the shipper of coals to C might, and doubtless would, in practice, charge more for the coals shipped to C than he could obtain on the coal shipped to D, because of the competition at the latter point. In the above I have assumed that the rate from B to C is greater than from A to C.

Q. 59. I suppose that in the course of your experience that you have occasionally known of shippers who were also the consumer of the commodity transported, have you not?

A. Yes, sir.

Q. 60. And you assumed that the shipper and the consumer were necessarily different persons, in making the answer you did next to the last preceding interrogatory?

A. I stated that the consumer must pay the rate of freight. If Jones, a miner of coal at A, should happen to live at C, and ship coal from A to C for his own use, or consumption, then Jones as the consumer would have to pay the rate of freight assessed against Jones as the shipper.

Q. 61. You recognize the fact, do you not, that the shipper
254 at C as to transportation from A (excluding transportation from B) is more favorably located than a shipper at D is, do you not?

A. If there were no line of communication from B to D, or if no coal were mined at and shipped from B to D, then the consumer of coal at C, would be under all ordinary circumstances, more favorably located than the consumer at D; in other words, if the transportation of coal from A to C were conducted under substantially the same circumstances and conditions as the transportation of coal from A to D, then the rate from A to C would certainly not be higher, and it might properly be less, than from A to D.

Q. 62. Don't you recognize the fact that C has the advantage of a better geographical location as to A than D has?

A. Certainly, and unless there be circumstances at D which necessitate a lower rate from A than would be accorded D, in the absence of such circumstances, then I admit again that the rate from A to C should certainly not be higher than from A to D, and might properly be less.

Q. 63. Then if I understand you, you claim in the case supposed, and with only the lines of communication supposed that carrier on account of the business at D being in the presence of possible busi-

ness from B, justifies the carrier in depriving C of its more advantageous geographical location than that of D, as to business coming from A?

A. The carrier does not deprive C of anything. It simply gives to D the advantage which it is entitled to because of the competition with the coals mined at B. If the carrier from A to D should voluntarily withdraw from the traffic at D, thus reducing the net revenue derived from its entire traffic, then it is not only probable, but reasonably certain that it would be compelled to advance its rate from A to C, in order to compensate it for the loss of revenue resulting from such withdrawal.

(Answer objected to as irresponsive to the question.)

Q. 64. You have said that C is more favorably located than D is as to business from A, have you not?

A. I admit that the distance from A to C is less than from
255 A to D, and under substantially similar circumstances and conditions C is more favorably located.

(Answer objected to as not responsive to the question.)

Q. 65. You have said that C is more favorably located than D is as to business from A, have you not?

A. I repeat that I admit that the distance from A to C is less than from A to D, and under substantially similar circumstances and conditions C is more favorably located.

Q. 66. The question does not relate to what you admit or to any other subject except what you have already testified to, and the enquiry is what you said upon this examination, and therefore I ask you again, have you not said in your testimony that as to business from A, that C is more favorably located that D is?

A. I stated in reply to the 62d question that C certainly did have a better geographical location as to A, than D had, and that under substantially similar circumstances and conditions C would be entitled to the advantages of such geographical position. I have tried to answer your question, but it is impossible to answer yes, or no, unqualifiedly, for the reasons that the circumstances at C and D are substantially and in fact, totally, dissimilar.

Q. 67. Then in your estimation, as to business coming from A and passing through C to D and business from A to C, there is no similarity of circumstance or condition whatever. Is this the meaning you would have us attach to the word "totally," which you use in your last answer?

A. I use the word "totally" in the sense that the rate charged from A to D has nothing whatever to do with the rate charged from A to C. I have not stated that there is no similarity whatever between the circumstances or condition as to business going from A to D and from A to C. The meaning which I intended to convey is that the circumstances are substantially dissimilar, or to repeat again, that the rate charged from A to C can and should be fixed without relation to the rate from A to D.

Q. 68. In answering the questions propounded, have you
256 taken into account any dissimilarity of circumstance and condition, except the fact of competition at D; if so, state what other dissimilarity of circumstance you have taken into account in answering the questions in relation to those points?

A. That is the only dissimilarity which I have considered in the supposed case under discussion.

Q. 69. You recognize the fact that there would be similarity of service rendered to the shipper at C and D, do you not?

A. Yes, sir.

Q. 70. And that all the circumstances and conditions, so far as it relates to the carriage of the goods between the points, are identical in the two cases, do you not?

A. Not necessarily. There might be other circumstances separate and apart from the question of competition which would produce a dissimilarity, but I have considered only the question of competition.

Q. 71. Then the circumstances and conditions in the case supposed are not totally dissimilar as to C and D, are they?

A. I have already explained my use of the word "totally" as relating strictly and entirely to the question of the rates themselves not as relating to the cost of service or the physical movement of the business.

Q. 72. Don't you think a difference in the cost of service makes a difference in the circumstances and conditions of two different kinds of traffic?

A. Not necessarily. I have stated in reply to one of the direct i-terrogatories that the cost of service does not necessarily bear any fixed relation to the value of service, which is affected by circumstances.

Q. 73. Don't you think that if the cost of hauling a car of coal by one train from A to C was $50, and the cost of hauling the same car by a more expeditious train was $100, that there would be on that account a dissimilarity of circumstances and conditions?

A. That would certainly be a marked dissimilarity in cost of service.

Q. 74. Would it be a dissimilarity of circumstances and
257 conditions of the traffic, in the sense in which you have used those words, in giving your testimony in this case?

A. I have not used the word "dissimilarity" in any such sense, whatever. I have used it simply and solely in connection with the facts surrounding the transportation rendered to the consumer at C and D.

Q. 75. Would it in your opinion be a dissimilarity of circumstances and conditions if the cost of moving a car from A to C by one train was $50, and by a more expeditious train $100.

A. I have already stated that it would be a marked dissimilarity in the cost of service and to that extent it would be a dissimilarity in the circumstances.

Q. 76. Suppose the coal from A to C by one shipper was delivered in full train-loads, and by another shipper in single car loads; in

your opinion (would this) amount to a substantially dissimilar circumstance and condition?

A. There might in that case again be a dissimilarity in the cost of service, and to that extent a dissimilarity of circumstances.

Q. 77. Other than the different cost of service, competition between carrier and carrier—competition between market and market—competition of product and product,—what is there which renders the transportation of two different shipments dissimilar as to circumstances and conditions, as you understand the meaning of that term, where the transportation is of the same commodity and by the same trains?

A. Competition of the several classes named are the only factors to my knowledge which operate to cause a dissimilarity of circumstances and conditions in the transportation of like kinds of property between the same points, over the same lines, in the same direction.

Q. 78. Have you purposely omitted, in your last answer, any allusion to the cost of service?

A. The cost of service is considered under substantially similar circumstances, but as previously explained, the cost of service does not necessarily bear any fixed relation to the value of service in the presence of any one or more of the several classes of competition referred to.

258 Q. 79. Then I understand you that you purposely excluded the consideration of the cost of service in replying to the next to the last preceding interrogatory; is that right?

A. I did not purposely omit it, but I wanted to lay stress upon the fact that the cost of service is not necessarily considered with relation to the value of the service in the presence of any one or more of the several classes of competition referred to.

Q. 80. Do you now wish to have us understand that in arriving at the conclusion of dissimilarity of circumstance and condition, you would consider, as one element, the difference in the cost of the service?

A. The cost of service would be considered.

Q. 81. What is your present position with the Richmond & Danville road?

A. Chief clerk to the traffic manager, Mr. Sol. Haas.

Q. 82. And your duties as chief clerk are to superintend the detail of the work in his office by the other clerks?

A. Yes, sir.

Q. 83. I don't understand you to claim that your relations to the Richmond & Danville road is one that gives you any authority as to shaping the policy of that line. Am I correct about that?

A. Yes, sir; you are correct.

Q. 84. Your former position with the Louisville & Nashville road was one of more importance in that respect, was it not?

A. Yes, sir; my authority was greater.

Q. 85. I suppose from the title of your office, when with the Louisville & Nashville, you had some authority in regard to the

making of rates, and controlled, to some extent, the administration of the business, did you not?

A. Yes, sir; under the direction of the general freight agent.

Q. 86. There were over you, when in that employ, a general freight agent, traffic manager and a vice-president, were there not?

A. Yes, sir.

(By Mr. BERNER:)

Q. 87. Mr. McGovern, you filed, as an answer to one of the
259 questions-in-chief, a map showing the navigable streams in the southeastern territory, and their navigable distances. Did you prepare that map?

A. Yes, sir; I marked off the lines indicating the various streams.

Q. 88. Do those red lines indicate true navigable distances?

A. To the best of my knowledge they do, but I want to explain, for example, that while I have shown the Tennessee river as being navigable from its mouth to Knoxville, Tenn., it is not continuously navigable, I believe, for the entire distance; at least I have not heard of continuous packet lines all the way from its mouth to Knoxville. There are some natural obstructions between Decatur and Florence, Ala., which, however, the Government is gradually removing.

Q. 89. As a matter of fact, there is not continuous navigation from the mouth of the Tennessee river to Knoxville, is there?

A. I cannot state positively that there is not continuous navigation, *i. e.*, that a steamer could not proceed all the way from the mouth of the river to Knoxville, but to my knowledge or recollection there have been no through lines of boats in recent years.

Q. 90. Why did you not indicate that fact on that map? And why did you let the map be attached to your answers, indicating as it does, that there is continuous navigation from the mouth to Knoxville?

A. I was asked to trace, "in red ink, from the ocean or gulf up to the head of navigation," and I endeavored to do it. I want to respectfully disclaim any intention whatever of misleading any one to believe that the Tennessee river is not, if in fact it be not, continuously navigable from its mouth to Knoxville, Tenn.

Q. 91. Is the Altamaha and Oconee rivers navigable up to Milledgeville?

A. I did not intend to carry the line of the river all the way to Milledgeville. I do not understand that there is any water competition at Milledgeville, at least to my knowledge. It has never been a factor in fixing the rates.

260 Q. 92. Is there any water transportation above the city of Dublin, Ga.?

A. My understanding has been that the river is navigable to the point at which it is crossed by the main stem of the Central railroad. The tracings were done hurriedly, and on the general information which has come to me from time to time in my business; in some cases they may not be exactly correct. For example, I note now that I have not shown Macon, Ga., as being situated on a

navigable stream, whereas I believe there is actually water competition at that point, which has operated as a factor in fixing the rates.

Q. 93. You state that there is water transportation between the seaboard and the city of Macon, and that that transportation has been a factor controlling the making and fixing of rates?

A. That has been my understanding.

Q. 94. How long have you been laboring under that understanding?

A. For years past.

Q. 95. Do you state that the presence of water competition at Macon has entered into the making of the present system of rates in Georgia, or those rates under which the roads have been operated for a number of years?

A. Yes, sir; it has been my understanding that the present rates from Charleston, Port Royal, Savannah and Brunswick to Macon, Ga., had their origin in the rates which were fixed years ago by water from the coast to Macon.

Q. 96. In your knowledge or from your information, state when a boat line has ever run to Macon. If any such boat line ever existed, state the last year in which it did business.

A. I cannot answer that question.

Q. 97. When has there been any water transportation to the city of Macon?

A. I cannot answer that question, except to repeat the impression or understanding above referred to.

Q. 98. There is a boat line there now, is there not?

A. I do not actually know.

261 Q. 99. Have you any information of your own knowledge upon which to base your testimony?

A. I have not.

Q. 100. Is there water transportation from the city of Cincinnati by way of the gulf to the city of Columbus, Ga.?

A. I understand that there is, but it has never been used to my knowledge, nor has it had any effect upon the rates from Cincinnati to Columbus.

Q. 101. Does water competition at Columbus affect the rates from Cincinnati to Atlanta?

A. It does not affect them directly. To my knowledge the existence of water competition from Cincinnati to Columbus, Ga., has never been considered in fixing the rates from Cincinnati to Atlanta.

Q. 102. How far is Columbus from Atlanta, by rail?

A. I believe the shortest line is something like 121 miles.

Q. 103. Does water transportation from the eastern markets to the south Atlantic coast affect the rate from Cincinnati to Atlanta?

A. In a general way it does, to this extent: that the water transportation or rates to the south Atlantic ports added to the rates inland from these ports to Atlanta represent the maximum charge which can be made from the eastern markets to Atlanta, and the rates from Cincinnati to Atlanta must, in turn, be adjusted with relation to the rates from the eastern markets. The existence of the transportation, by ocean, to the south Atlantic ports, must always

operate to restrict or fix the maximum rates which can be charged from the eastern markets to interior points like Atlanta.

Q. 104. The rate from Cincinnati to Atlanta, by rail, is fixed so that the manufacturers of Cincinnati may compete with the manufacturers of the eastern markets in the sale of their goods in the city of Atlanta; is not that true?

A. Yes, sir; that is true.

Q. 105. In that instance the rate is fixed without reference to mileage, is it not?

A. Not altogether. Mileage must, of course, always be
262 considered. It is fixed by agreement between the various transportation companies interested in the traffic, or by arbitration, which is, after all, an agreement in itself; that is to say, the carriers agree that in case they disagree, disinterested parties shall decide for them.

Q. 106. By this agreement the carriers surrender their right to fix the rates for themselves, respectively, and accept the rates fixed by the Southern Railway & Steamship Association?

A. They do not surrender the right to fix their rates, but they do agree that where two or more carriers are interested, the rate shall be fixed only by agreement, or by arbitration, in the event of failure to agree. There is nothing to prevent any carrier from withdrawing from the association, of which it has voluntarily become a member, should it desire to so withdraw.

Q. 107. Is it not true that if a carrier withdraws from the association it thereby provokes the commercial antagonism of the association?

A. No, sir; that is hardly true. As a matter of fact the lines leading from Cincinnati to Chattanooga, and which transport practically all of the traffic from Cincinnati to Atlanta, did withdraw from the association several years since, and did not resume membership until very recently. During that period the lines between Chattanooga and Atlanta continued to make through rates with the lines which had withdrawn from the association, to honor their bills of lading, and in all respects to continue friendly relations. Of course, in such cases, the lines, members of the association, would prefer that their neighbors would come into an arrangement or association whose object it is to establish and maintain reasonable rates, alike beneficial to the public and to the carriers themselves.

Q. 108. Is it not a fact that during the withdrawal of these controlling lines from that association, the roads from Chattanooga into Georgia were compelled to accept the business or lose it altogether? And is it not true that it was a matter of commercial necessity that required them to continue the acceptance and honoring their through bills of lading?

A. It is a fact that the roads from Chattanooga into Geor-
263 gia, or at least from Chattanooga to Atlanta, had to continue to accept the business at Chattanooga or lose it altogether. It is also true that it was a matter of commercial necessity and likewise to their interest to continue honoring through bills of lading.

The point which I endeavored to make, was that the lines north of Chattanooga did not incur the commercial antagonism of the lines south of Chattanooga by withdrawing from the association.

Q. 109. How many votes has a member of the association in determining disputed questions?

A. Each member has one vote.

Q. 110. Is it not true, as a general rule, that rates are fixed upon basis of mileage?

A. Yes, sir. Under substantially similar circumstances and conditions, distance is the controlling factor.

Q. 111. Under that rule, referring to the diagram, the point C, with reference to A, would be entitled to a less rate than the point B?

A. Yes, sir; under substantially similar circumstances and conditions, the rate from A to C should certainly not be higher, and it might properly be less than from A to D.

Q. 112. Should it not, as a matter of fact, be less on like shipments?

A. It depends on distances; for example, if the distance from A to C were only 70 miles and from A to D 100 miles, then I should say that the rate from A to C should be less than from A to D. You understand that in constructing tariffs based upon distances, certain groups of stations take the same rates, although the distances are not in all cases exactly the same to or from each station; for example, the rates for all distances between 80 and 90 miles might be uniform; between 90 and 100 miles they might be uniform, etc.

Q. 113. But it is a fact that the presence of a competing coal market at B over a shorter line B D, reverses the natural order of distances, and in relation to rates makes C really more distant from A than D; is not that a fact, under your method of fixing rates?

A. That is the effect. If the line from B to D fixes a rate
264 on coal, for example, at $1.00 per ton, from B to D, the line from A to D must meet that competition, even though this might make the rate from A to D less than from A to C.

Q. 114. Is it not true that under this system of rate-making the railroads confer upon some certain localities, artificial advantages resulting from traffic and take from other localities advantages conferred upon them by God and nature, and which, without the interference of this peculiar system of rate-making, they would, in the ordinary course of trade and transportation, naturally enjoy?

A. I cannot possibly see it that way. If it can be shown that the rate from A to C is reasonable in itself, and that the carrier, in making the relatively lower rate from A to D, simply meets the competition already existing at D, I am utterly unable to discover wherein the consumer at C is injured, or wherein he is deprived of any advantages which he should enjoy. On the contrary, I believe that the carrier, in realizing a small profit on the traffic transported from A to D, is thus enabled to transport the traffic from A to C at a lower rate than it could afford to make, should it arbitrarily make the rate from A to D greater than the

rate from B to D, and thus withdraw from the traffic at D. Further, in enabling the coal operator at A to dispose of his output at D, the carrier inferentially, at least, enables the operator to sell his product at a less price to the consumer at C than if the market for such product were curtailed or restricted. It does seem to me that the carrier and the operator, in joining in a partnership arrangement to deliver coal at D at a reduced profit as compared with the coal sold at C, are simply increasing their ability to give to the consumer at C a reduced price on coal and a reduced rate of freight, as compared with the price and rate of freight which would be charged should the operator and the carrier have to depend entirely upon the profits realized from the traffic transported from A to C or other intermediate local points between A and D.

Q. 115. Give a single instance in Georgia where the profits on through business at terminal points has exclusively and
265 in itself operated to reduce rates at intermediate stations; give the time, station and the class of freight.

A. I cannot recall an instance where the carriers have willingly or voluntarily reduced the rates to intermediate local points in Georgia, because of the profit derived from traffic transported at relatively lower rates to a farther competitive point, but it is self-evident, as a general proposition, that if you deprive carriers of the right to meet competition at such further points, necessarily you reduce their ability to continue their present reasonable rates to intermediate local points and compel them, within legal limits, to advance their rates to local points in order to compensate them for the loss of the profit derived from the competitive traffic.

Q. 116. As between two or more competing lines, the longer lines adopt the rates of the shortest line; the shortest line fixes the rate, does it not?

A. Yes, sir; that is true. The longer line must compete for the traffic at the same rates as fixed by the shorter line, or surrender it altogether.

Q. 117. In practical railroading, how much longer must one competing line be than another before it reaches the limit of carrying or surrendering the business?

A. There is no limit. So long as the longer line believes that there is any profit whatever in the traffic above cost o- service, it will naturally compete for it.

Q. 118. Where does the knowledge of their profit and the belief as to their profit begin and end?

A. It is a matter of judgment and experience and the result of daily and hourly study and observation. It is not susceptible of exact demonstration. No one has ever yet been able to figure to a mathematical nicety what it will cost tomorrow or the day after to transport one hundred pounds of buggies from Cincinnati, O., to Atlanta, Ga., over any of the lines competing for the traffic.

Q. 119. Tell us as clearly as you can how and in what respect the existence of competition between carriers influences or

266 affects the circumstances and conditions under which transportation of freight is carried on?

A. It compels carriers to transport property between given points by longer or more circuitous routes at rates which are the same as or even less than the rates fixed by shorter or more direct routes, or routes having the advantage of cheaper modes of transportation. It compels carriers to transport property by longer or more circuitous routes from given points of origin at rates which are the same or about the same as may be fixed by shorter or more direct routes from adjacent points of origin to the same destination. It compels carriers to transport property from given points of origin by longer or more circuitous routes at rates which are the same or about the same as are fixed by shorter or more direct routes from the same points of origin to adjacent points of destination.

(At the request of petitioners' counsel the examiner certifies as follows: When question 119 was propounded to the witness, he asked permission to look at previous answer. Counsel for plaintiff objected, and witness answered without reference to previous answer.)

Redirect examination:

Q. 1. Please file copies of the tariffs referred to in the cross-question No. 30, and mark them as Exhibits Nos. 5, etc., to your deposition.

A. I will do so. (See Exhibits 5 and 6.)

Referring to my answer to question No. 57, I desire to state that I misunderstood the question. I thought it was "rate per ton per mile" instead of "profit per ton per mile." My answer to the question as it appears in the record is "Not necessarily. It would under similar circumstances."

P. J. McGOVERN.

(Here follow four maps and a broad-side table, marked pp. 266*a*, 266*b*, 266*c*, 266*d*, 267, & 268.)